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A  
**SUMMARY**  
 OF  
**COLONIAL LAW,**  
 THE  
**PRACTICE OF THE COURT OF APPEALS**  
 FROM  
**THE PLANTATIONS,**  
 AND OF THE  
**LAWS AND THEIR ADMINISTRATION**  
 IN  
**ALL THE COLONIES;**  
 WITH  
**Charters of Justice, Orders in Council, &c. &c. &c.**

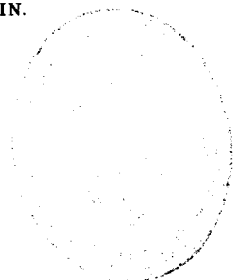
BY CHARLES CLARK, ESQ.  
 OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

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TO  
THE RIGHT HONOURABLE  
**THOMAS SPRING RICE, M. P.**

SECRETARY OF STATE FOR THE COLONIES,

*&c. &c. &c.*

**THIS WORK**

IS,

BY PERMISSION,

**MOST RESPECTFULLY DEDICATED**

BY

**HIS VERY OBEDIENT**

**AND**

**HUMBLE SERVANT,**

**THE AUTHOR.**



## INTRODUCTION.

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As, I believe, it is generally known in the legal profession that one of its most learned and able members had begun a work upon the subject of the Laws of the Colonies, and that the materials he had prepared were handed over to me, it is but justice to the high and well-earned reputation of that learned person clearly to explain the nature of the transfer, in order that he may not be held responsible for any defects in the work that ought rather to be charged upon me. Mr. Serjeant Stephen, on putting into my hands the matter he had collected for the early portion of this volume, declared that he considered himself no longer to have any connection with it ; and feeling, as I did, the perfect propriety of such a declaration, I have never since ventured to trouble him upon the subject. I have freely exercised the uncontrolled authority given me over the materials thus furnished, and as the work now stands I alone am answerable for its defects.

In explanation of the distribution of the parts of this work, I should observe that the first portion consists of a Summary of the Laws relating to the Colonies. This summary was originally intended to form the first chapter.\* The second portion contains accounts of the different Colonies and of their laws, together with the Charters of Justice regulating the administration of the law in the Colonies to which such Charters have been granted. It was at first proposed to print the accounts of the Colonies as a second chapter, and to add the Charters of Justice and other similar documents by way of Appendix; but I conceived that it would be more convenient for the reader to find everything relating to any one Colony in the same portion of the book, and I therefore omitted the division of a second chapter, and threw the whole into the form of an Appendix. In consequence of this arrangement the Appendix occupies by far the largest portion of the volume; and though this may be objectionable in some respects, it has the recommendation of affording a facility of reference, to which, especially in a law book, I thought some less important objects might well be sacrificed.

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\* In that part, the law, as declared by text writers, by judicial authorities, and by Acts of Parliament, forms the text; and where I have seen reason to think that the law thus declared required comment or illustration, I have added notes for that purpose.

I am but too sensible that I have not been able to present to the profession so complete a work as they could have desired, nor as I could have wished to offer to their acceptance. I claim indeed little merit beyond that of industry and care in the selection and compilation of authorities, and I am fully aware that the chief recommendation of my labours will be, that the reader may find collected, in one volume, information for which he would otherwise have to search through many different works, some of them not very easy of access. Let me avail myself of this opportunity to acknowledge the kind assistance I have received from many private friends, without whose aid it would have been impossible for me to complete the task I had undertaken. The amount of information upon the administration of the law in the Colonies, to be obtained from works published in this country, is insignificant in the extreme, except in the instance of those Colonies respecting which the West India Commissioners have made and published their valuable Reports. The books upon this subject published in the Colonies are not numerous; but few of them find their way to this country, and those few are only to be found in the libraries of private individuals. It might have been supposed that the colonists, with a view to their own interests, would have forwarded to the library at the Colonial Office, and to the British Museum, such works as would enable

any one who desired it to obtain complete and accurate information on any subject which, for the benefit of the Colonies, he might wish to bring under public discussion. But such has not been the fact.\* Under these circumstances I have been obliged to borrow from all quarters books that could be found no where but in private libraries; and for the readiness with which these were lent, not only by personal friends but by gentlemen to whom I had before been a stranger, I have to express my sincerest obligations. I have been most particularly indebted for assistance to Mr. F. Pollock, M.P., Mr. Godson, M.P., Mr. Lloyd, M.P., Mr. Dwarris, Mr. W. Bruce, Mr. T. De Sausma-rez, and Mr. H. W. Parker. The last of these gentlemen, who had already published an excellent little work upon Van Diemen's Land, and whose attention had been particularly directed to the Australian Colonies, voluntarily offered (and his offer was most gladly accepted) to contribute that portion of the book which related to those Colo-

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\* Upon a Colonial question of considerable importance, an honourable member of the House of Commons was recently compelled to apply to his various acquaintances for the means of obtaining that information which none of our public libraries afforded him. Even the Almanacks of the different Colonies, works containing more authentic legal information than our knowledge of what Almanacks are in this country would lead us to suppose, are rarely to be met with where they might most be expected to be found.



nies. To Mr. Greville and Mr. Devey, of the Privy Council Office, and to Mr. Mayer, the Librarian of the Colonial Office, I also beg to offer my best thanks for the assistance so politely and readily afforded by them.

The first portion of this volume was printed before the Autumn of last year, but circumstances have unavoidably delayed its publication till the present moment. It has been suggested to me in the interval, that as the condition of the East Indian Colonies has been altered since I began the work, it would be extremely useful to print a volume upon the administration of the laws in those important dependencies; and as I was honoured with this suggestion from Sir Alexander Johnston, for whose services in Ceylon this country and that Colony have equal reason to be indebted, I felt it impossible to hesitate about adopting it.

A Summary of the Laws governing our East Indian Possessions will therefore form an additional volume to the present, to which it will make all necessary references.

After the first portion of the summary had been put into the printer's hands, a question of considerable importance, relating to the powers of a Governor, was brought under my notice. A foreigner had gone into one of our Colonies, and had there complied with the terms of a proclamation issued under competent authority, which prescribed what should be done by any foreigner who

desired to obtain the privileges of a British subject in that Colony. He was subsequently sent out of the Colony by an order of the Government. The question under these circumstances was, whether any Governor of a Colony could give the rights of a naturalized citizen to a foreigner who came to reside within the Colony. The opinion that he could not was asserted in the Colony, and at first adopted in England on the authority of Lord Coke, who says,\* “The King cannot grant to any other to make of strangers born, denizens; it is by the law itself so inseparably and individually annexed to his royal person (as the book is in the 20 Hen. 7, fol 8,) for the law esteemeth it a point of high prerogative, *jus majestatis et inter insignia summæ potestatis*, to make aliens born subjects of the realm and capable of the lands and inheritances of England in such sort as any natural born subject is.” In this passage, which is still good law, no notice is taken of a distinction that has however been raised by subsequent writers, adopted by Colonial Acts, confirmed at home, and also by Acts of the British Parliament itself. That distinction is, that the right of a naturalized subject may be granted to a man in a Colony without conferring upon him similar rights in the mother country. So long ago as the 35 Car. 2, an act was passed by the Legislature of Jamaica and confirmed in this country,

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\* Calvin's Case, 7 Coke, 51.

by which, to encourage the settling of the island, the Governor or Commander-in-Chief was authorized under the broad seal of the island, to make aliens "being already settled, or such as shall hereafter come to settle and plant in it, having first taken the oath of allegiance, to be to all intents and purposes fully and completely naturalized." The application of the four last words is shewn by another section, which declares that such persons "shall have and enjoy, to them and their heirs, the same immunities and rights of and unto the law and privileges of *this island*, in as full and ample a manner as any of His Majesty's natural born subjects." A similar act was passed by the Assembly of Antigua in 1702, and confirmed at home May 8th, 1703. That act declared that Protestant aliens desiring to become inhabitants, should be brought before the Governor and Council, and having taken certain oaths and acquired ten acres of freehold land in the country, or a house in any town in Antigua, might acquire and dispose of all kinds of property *in the island* as if they were natives. In addition to these local acts, the English statutes 13 Geo. 2, c. 7, and 2 Geo. 3, c. 25, made similar provisions as to the naturalization of foreigners in "any British Colony in America," and the 13 Geo. 3, c. 25, declared that all persons becoming His Majesty's born subjects, by virtue of the two preceding acts, might hold places of trust and take grants of land from the crown, such not being places of trust or

grants of land within the United Kingdom. The act of 1 Wm. 4, c. 53, passed with respect to Lower Canada, enabled foreigners who have been naturalized by the Legislative Assembly of Lower Canada to vote for members of the Assembly, and to be summoned or elected to seats in it. It was therefore clear that the law had formally recognized the authority of Colonial Governments to grant this limited species of naturalization, and the person improperly sent out of the Colony was allowed to return.

As the opportunity of inserting this matter in the body of the work, as part of the account of the powers of a Governor, had passed by, I thought its introduction in this place might be pardoned, as it seemed too important to be altogether omitted.

CHARLES CLARK.

2, PUMP COURT, TEMPLE,  
*Sept. 5th, 1834.*

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#### ERRATA.

Page 24, line 18, for 57 *Geo.* 3, read 1 *Wm.* 4.

Page 313, line 8 from the bottom, add "*and also to the Orders in Council, ante, 274 and 288.*"

A

SUMMARY

OF

COLONIAL LAW.

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**THE** British Colonies or Plantations are remote possessions or provinces of this realm, occupied for the purposes of trade or cultivation.(1)

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(1) Mr. Reeves observes (on Shipping, pt. ii. c. 1; p. 104,) that "plantation originally implied the idea of introducing, instituting, and establishing, where every thing was desert before," but that colony and plantation now seem to mean the same thing, though formerly a plantation was not a colony till the King had appointed a governor or civil establishment. It was according to this modern use of the two words that Guadaloupe, taken from the French in 1759, was held by Attorney-General Pratt and Solicitor-General Yorke to be a plantation within the meaning of the Act of Navigation. The latter, however, called it "a plantation or territory belonging to the King by conquest." 2 Cha. Op. 357; and see *Wytham v. Dutton*, 3 Mod. 161, where, in a question respecting Barbadoes, which was found a desert island

and planted by British subjects, "islands gotten by conquest, or by some of the King's subjects going in search of prize, and planting themselves there," are spoken of *arguendo* as convertible ideas. Doctor Johnson defines "colony" to be "a body of people drawn from the mother country to inhabit some distant place." But the term is of more comprehensive sense in the English law, in which *territory* rather than *people* is the predominating idea. In a legal sense, it seems a necessary part of the definition that a territory should be a *possession of the realm*, or part of his Majesty's dominions. This is not the case with every settlement, for in some, British subjects may only have rights of occupation. Thus by treaty of peace with Spain in 1763, it was agreed by the King of Spain that British subjects should not be dis-

It is proposed in the following pages to consider,

I. The laws to which, in a general view, the colonies are subject.

turbed in cutting logwood at the Bay of Honduras, but should be allowed to occupy houses and magazines there. A question arose whether the Bay of Honduras thereby became a territory belonging to his Majesty within the Navigation Act, and it would seem, that on the principle laid down by Mr. Reeves, it was held not to be so. (*Chitty on Commerce*, vol. i. p. 636.) It has been thought that the term "colony" is not in law applicable to a mere military possession, and the case of *Lubbock v. Potts*, (7 East, 449,) exhibits an instance in which that doctrine of exclusion has been applied to Gibraltar. Yet if the definition of Dr. Johnson, or the fact of possession of territory, were alone to give the rule, that place ought fairly to be ranked among our colonies. Besides, in *Lubbock v. Potts* the question was not on the word "colony," but "plantation." That case, therefore, even if well decided, would hardly support the opinion for which it is quoted. Lord Ellenborough described Gibraltar as "a mere fortress and garrison, incapable of raising produce, but supplied with it from other places." Previous legal authorities had not considered Gibraltar in the same light. If it were "a mere fortress and garrison," there could be no objection to its remaining under martial law, yet so early as 1722, there was a petition to the Crown supported by the members for the City of London, praying that a civil juris-

diction might be established there, and complaining on the part of the merchants and traders of the town, that notwithstanding letters-patent had been granted by the Crown for the establishment of a civil, they were still under a military government. (1 Chal. Op. 169.) Among the papers submitted by the Privy Council to the Attorney and Solicitor-General, (Raymond and Yorke,) was one stating, that at the time Gibraltar was taken it contained "one nunnery, two convents," some other establishments of the same kind, and "1000 families." (The population is now, exclusive of troops, 16,500.—M'Culloch's Dict. of Com. art. Gibraltar.) The petitioners expressly asked for a civil government to be established there "as in the American colonies," and the Attorney and Solicitor-General reported in favour of the request. In the Charter of Justice, dated in 1817, the letters-patent of Geo. 1 and Geo. 2 are both recited as having been issued to establish courts of justice in "the town and territory of Gibraltar;" and the expression "town and territory" was also used in the opinion of the two learned persons above referred to, who recommend that "some settlement ought to be made of the property in the houses and lands there." In *Campbell v. Hall*, Lord Mansfield says, (Cowp. 211,) "there are inhabitants, property, and trade in Gibraltar." That place had therefore before the period

II. The particular legal constitutions at present prevailing in them.

III. Such acts of the British Parliament as impose regulations on the colonies.

IV. Some miscellaneous points of English law upon matters relating to the colonies.

I. In its colonial possessions, the crown possesses the same right of sovereignty, and (in general) the same prerogative as in the mother country.<sup>(2)</sup> The political and military administration is consequently vested in a governor, appointed by the king; and the laws are administered and executed in the king's name by the same functionary, and by other executive and judicial officers acting under the crown.<sup>(3)</sup>

Laws to which the colonies are subject.

when *Lubbock v. Potts* was decided, been treated both by the Crown and by the highest legal authorities as something beyond "a mere fortress and garrison;" and the true reason for the judgment given in that case is perhaps rather to be found in the statement there made, that "in fact the term plantation, in the sense of the navigation laws, had never been applied to any of the British dominions in Europe" than in any other circumstance. The same cause has probably operated to keep Jersey, Guernsey, and (since the 41 Geo. 3) Malta, in the anomalous situation of "British possessions in Europe," that is, in a state in which, with regard to trade, they are considered in one character, and with regard to legal government in another. They have not the benefit of a direct trade with the East and West Indian colonies; but appeals lie from them as from those colonies to the King in

council. (*Mostyn v. Fabrigas*, Cowp. 174.) Upon the subject of this note see *Lubbock v. Potts*, 7 East, 449; 3 Smith, 401, S. C.; *Acton's Rep.* 305; 12 Car. 2, c. 18, s. 18 (since repealed); *Rubichon v. Humble*, 1 Dow's Rep. 191; 48 Geo. 3, c. 69; 41 Geo. 3, c. 103.

(2) "The prerogative in the West Indies, unless where it is abridged by grants, &c. made to the respective provinces, is that power over the subjects which by the common law of the land, abstracted from all acts of parliament and grants of liberties to the subjects, the King could rightfully exercise in England." 1 Cha. Opin. 233; see *ibid.* 203.

(3) The case of *proprietary* and that of *charter* governments, (to be afterwards noticed,) are so far exceptions to this, that the governors and other officers are appointed not by the crown, but by those to whom

On the other hand, the king is bound in the colonies, as at home, to govern according to established law.(4) It is necessary, therefore, to consider to what laws the colonies are subject.

In doing this, it will be necessary to distinguish the colonial possessions from each other, in reference to the manner of their acquisition by the parent state. They are acquired, 1, by *conquest*; 2, by *cession under treaty*; or 3, by *occupancy*, viz. where an uninhabited country is discovered by British subjects, and is upon such discovery adopted or recognized by the crown as part of its possessions.(5)

In case of *conquest* or *cession*, the conquered or ceded country retains its former laws, till they are changed by competent authority.

It has been said that all unchristian or immoral institutions are *ipso facto* abrogated,(6) and in lieu of

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the crown has delegated its rights. But there is at present no proprietary, nor any charter government in the British colonies.

(4) *Campbell v. Hall*, Cowp. 204.

(5) A country may also come to the crown by hereditary descent, or other lawful title. As to which see *Calvin's case*, 7 Co. 17 b. But it did not seem worth while to treat this rare mode of acquisition as part of the general classification.

(6) The rule is thus broadly stated, (*Calvin's case*, 7 Reports, 34,) that "if a Christian king should conquer a kingdom of an infidel, and bring it under his subjection, there *ipso facto* the laws of the infidel are abrogated, for that they be not only against Christianity, but against the laws of God and nature contained in the decalogue." In the case of *Blankard v.*

*Galdy*, decided in the reign of Will. 3, and reported in 2 Salk. 411, that rule is adopted, with some slight restriction. It is there said, "in the case of an infidel country their laws by conquest do not entirely cease, but only such as are against the laws of God;" and that in all such cases where the laws are rejected or silent, the conquered country shall be governed according to the rule of natural equity." In the report of the same case in 4 Mod. 222, although this point is raised in the argument, it is not mentioned in the judgment. In 2 P. Wms. 75, there is a note of a statement made by the Master of the Rolls as to something that had been determined in the Privy Council upon an appeal from the plantations. In that note the Master of the Rolls represents the council to have de-



them the rules of natural equity are to be administered

cided, that "until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place, unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail." The case of *Blankard v. Galdy*, as reported in Salkeld, is referred to. But two other reports of that case exist in Holt, 341, and in Comberbach, 228. In the former, nothing is said about the abrogation of laws hostile to Christianity in a conquered country. In the latter, the authority of *Calvin's case*, on which the reports in Salkeld and Peere Wms. seem solely to found themselves, is thus observed upon:—"And where it is said in *Calvin's case* that the laws of a conquered heathen country do immediately cease, that may be true of laws for religion, but it seems otherwise of laws touching the government." The doubt here thrown upon the somewhat sweeping terms of the doctrine as stated in *Calvin's case*, may be justified not only on principles of reason, but even by the practice of the English government. If unchristian or immoral institutions are *ipso facto* abrogated, then it would have been out of the power of the English to have tolerated them even for a moment. Yet they have done so in our East Indian possessions (37 Geo. 3, c. 142, s. 12.) in the cases of the Sutees and the barbarous rites of Jughernaut. The immoral or unchristian nature of such customs affords a reason for abrogating them,

but then such abrogation must be the effect of the declared will of the conqueror, and cannot take place as of course and unavoidably on the instant of the conquest. Lord Mansfield's opinion therefore was (*Campbell v. Hall*, Cowp. 209,) that the doctrine should stand thus:—"that the laws of a conquered country continue in force until they are altered by the conqueror;" and he added, "the absurd exception as to Pagans mentioned in *Calvin's case*, shows the universality and antiquity of the maxim. For that distinction could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the crusades." Within this limit the rule would now seem to be confined. But there is one distinction that deserves to be considered. This relates to laws contrary to the fundamental principles of the British constitution. Such laws would, with regard to the conqueror at least, and, it is apprehended, with regard to the conquered also, cease upon the instant of conquest. Thus if any country in which the infliction of torture was the law, should come into the possession of Great Britain, such law would fall of course. The constitution of Great Britain would put an end to it. (Per Lord Chief Justice De Grey, Trial of *Fabrigas v. Mostyn*, 60.—Stokes, 11.) Allowing for exceptions of this sort, the law would remain as before, and would not be altered but by the declared will of the conqueror. Customs that were merely unchristian, but not contrary to the fundamental constitution of

by the King, or by such judges as he shall appoint.(7) And the case is the same where the law of the conquered country is silent.

The power of changing the laws of a conquered country resides in the King in council, for it is the right of the conqueror to impose law on the conquered. And the cases of cession, and of conquest, are in this respect not distinguishable, unless the right is restricted by compact with the ceding party. In exercising this power, the King is not bound to legislate in conformity with the law of England. He may impose whatever laws he pleases.(8)

the British empire, nor to the inalienable rights of her citizens, by whose arms the conquest had been obtained, certainly would not be abrogated by the mere fact of conquest. Some such customs exist at this moment in colonies originally planted by the English. "In the Slave Court at Barbadoes slaves are sometimes sworn upon grave dirt, according to a superstition." (1 Rep. W. L. C. 48.) This custom is certainly not Christian, nor can the forms of swearing peculiar to the Jews, the Hindoos, and the Turks, be said to be so, yet all are admitted not only in the courts of our colonies, but in Westminster-Hall itself, on the principle of the common law, that there is no particular form essential to an oath taken by a witness; that which he considers the most binding shall be adopted. *Everett v. Atcheson*, Cowp. 389.

(7) 2 Salk. 411. Would not this be in effect to give the conquered place the laws of the conquering country, to such extent at least as they could be applicable to

its particular circumstances? For, generally speaking, the common law of each country is esteemed by the inhabitants of that country to consist of the rules of natural equity, and the mind of the judge who presided in the tribunals of a conquered country would perhaps have no other standard to judge of those rules, but that with which his acquaintance with the common law of his own country had furnished him.

(8) *Wytham v. Dutton*, 3 Mod. 160; Show. P. C. 24; 2 P. Wms. 75; *Campbell v. Hall*, Cowp. 204.

Lord Mansfield however in the last book says, that this power is subordinate to the authority of parliament, and, therefore, that he "cannot make any new change contrary to fundamental principles; he cannot exempt an inhabitant from that particular dominion, as for instance, from the laws of trade, or from the power of parliament, or give him privileges exclusive of his other subjects, and so in many other instances which might be put."

Such change may be either partial or general. It may consist of the introduction either of particular institutions, engrafted on the former law of the place, or of an entirely new code superseding it altogether. And it may involve an alteration also of its political constitution or form of government.

When the change is partial only, it is said that the former customs of the country will still be in force as to all matters not otherwise provided for.(9)

In giving a new constitution to a conquered or ceded colony, if the Crown provides (as has hitherto usually been the case) that a *Representative Assembly* shall be summoned among the inhabitants of the colony, with the power of making laws for its interior government, it has been decided that the Crown cannot afterwards exercise with respect to such colony its former right of legislation.(1) It has impliedly renounced that right by the appointment of a legislative power within the colony itself.

In the case of a colony acquired by *occupancy*, which is a plantation in the strict and original sense of the word, the law of England then in being, is immediately and *ipso facto* in force in the new settlement;(2)

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(9) *Blankard v. Gully*, 4 Mod. 222. But when by royal commission a new legal constitution has been granted to a colony, establishing a legislature, courts of justice, &c. the commission has generally directed that the law administered in its courts of justice shall be in all things as nearly agreeable as possible to the law of England. After the issuing of such commission, therefore, the law of England is the rule in cases not specially provided for. See *post*.

(1) *Campbell v. Hall*, Cowp. 204.

(2) Determined by Lords of Privy Council on appeal, see 2 P. Wms. 75; see also 1 Black. Com. 107; Com. Dig. Ley, C.; Show. P. C. 32; 1 Chal. Opin. 195; 2 ib. 202; Stoke's Law of Colonies, 10. In such a place, there being no preceding laws to contest the superiority with them, the laws of the mother country, so far as they could be applicable, would naturally be adopted by the settlers. Mr. Fox gives another reason for this, when

and such a colony is not subject to the legislation of the Crown, for the King cannot pretend in that case to the rights of a conqueror,(3) but the subjects of Great Britain, the discoverers and first inhabitants of the place, carry there with them their own inalienable birth-right, the laws of their country.(4)

But they carry only so much of these laws as is "applicable to the condition of an infant colony; such, for instance, as the general rules of inheritance, and protection from personal injuries. For the artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue, (such especially as are enforced by penalties,) the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions,(5) are neither necessary nor convenient for

he describes such persons as merely cultivators of the soil, who had not the power to establish a form of government independent of the state, which could alone be their protection.

(3) So if a country come to the crown by title or descent, it is not subject to legislation by the crown. It retains its old laws till changed by act of parliament. *Calvin's case*, 7 Co. 17 b.

(4) The common law of England is the common law of the plantations, and all statutes in affirmance of the common law passed in England antecedent to the settlement of any colony, are in force in that colony, unless there is some private act to the contrary, though no statutes made since those settlements are there in force, unless the colonies are particularly mentioned.

"Let an Englishman go where he will, he carries as much of law and liberty with him as the nature of things will bear." 1 Chal. Op. 195; and 2 *ib.* 202. "English subjects carry with them your Majesty's laws wherever they form colonies." Per Attorney and Solicitor-General Pratt and Yorke.—"In a place occupied by the king's troops, the subjects of England, would impliedly carry the law of England with them." Per Lord Ellenborough, C.J. in *Rex v. The Inhabitants of Brampton*, 10 East, 288.

(5) Among these may be noticed the bankrupt and poor laws, the mortmain acts, and the game laws. See *Attorney-General v. Stuart*, 2 Meriv. 143. And it seems all penal statutes, *Dawcs v. Painter*, Freeman, Rep. 75. In this last case it is emphatically said, "bene-

them, and therefore not in force. What shall be admitted and what rejected, at what times and under what circumstances, must, in cases of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in council; the whole of their constitutions being also liable to be new modelled and reformed by the general superintending power of the legislature in the mother country.”(6)

In a colony so circumstanced, as well as in all others, the right of appointing governors and other officers for the execution of the law, of erecting courts of justice for its administration, and of summoning representative assemblies among its inhabitants, for the purpose of

ficial laws might extend to things not *in esse* at the time of making the statute. Penal statutes never do.” See also 2 Rep. West India Commissioners, 61.

(6) Black. Com. 108. Stoke's Law of Colonies, 4. It has been laid down by learned writers, “that it is not true as a general proposition that the inhabitants of the colonies carry with them the *statute* laws of the realm; but whether they do so or not depends upon circumstances, on the effect of their charter, on usage, and the acts of their legislature; and it would be both inconvenient and dangerous to adopt the proposition in so large an extent.” Chitty on Commerce, vol. 1, p. 639, cites 1 Chal. Opin. 195, 198, 220. But if by this is meant that they carry no part of the statute law, it will be difficult to assent to the doctrine; for it is conceived to be clearly established, that a colony acquired by occupancy, receives the statute as well as the common

law of England then in being, subject (as to both) to the exceptions noticed in the text. Accordingly we find Lord Mansfield in the case of *Campbell v. Hall*, Howell's State Trials, vol. 20, p. 289, thus expressing himself:—“It is absurd that in the colonies they should carry all the laws of England with them. They carry such only as are applicable to their situation. I remember it has been so determined in the council. There was a question whether the Statute of Charitable Uses operated on the Island of Nevis. It was determined it did not. No laws but such as were applicable to their condition, unless expressly enacted.” This case was the best that could have been chosen for the illustration of the rule, for Nevis was a place acquired by occupancy. The English first settled there in 1628. See Raynal's East and West Indies, 3d ed. vol. 4, p. 323; and Edwards, vol. 1, book 3, c. 4, s. 2.

interior legislation, belongs by virtue of its general prerogative, already noticed, to the crown.(7)

But in such colonies, the crown alone having no power of legislation, their condition in that respect essentially differs from that of colonies acquired by conquest or cession.

On the other hand, every colony, whether acquired by occupancy, by conquest or by cession, is subject at all periods of its existence, as part of the British dominions, to the legislative authority of the *British Parliament*,(8) by whose power, paramount (where both apply) to that of the king in council, its existing laws may in all cases be either wholly or in part repealed, and new laws, or a new constitution, be at pleasure imposed.(9)

(7) And see 1 Chal. 183, 184, and 2 Chal. 169, 170, 241.

(8) The principle on which this rule depends, so far as it applies to colonies acquired by the occupancy of British subjects, is thus stated *arguendo* and silently adopted in a most elaborate report made to the king by the Attorney and Solicitor-General Northey and Thompson, on the petition of the Earl of Sutherland respecting the king's and the petitioner's rights to the three lower counties on the Delaware. "A subject of the crown could not make foreign acquisitions by conquest but for the benefit of the crown." (1 Chal. Opin. 41.) This principle appears to have governed the opinions of the various lawyers, who at different times made their reports to the government on the subject of escheats in the colonies. See 1 Chal. Opin. 122, *et seq.* Another view of the same subject is taken by Mr. Fox in a speech on an amendment moved as to one of

the clauses in the "Colonial Place Bill." The speech was delivered on the 2d July, 1782. "If any person will just consider from whence we attempted to legislate for America, he must be convinced that in the first establishment of the colonies it was indispensable. They were then merely the cultivators of the soil. It was not for them to establish a form of government independent of the state, which could alone be their protection. They were in possession of every privilege, and had gone there only to acquire possession of property. But when the acquisition of property excited ambition to exert its authority beyond the limits of protection, it was then their immediate interest, upon every principle of natural and political justice, to resist this abuse of legislative authority." Speech, p. 23.

(9) *Campbell v. Hall*, Cowp. 204; 1 Black. Com. 103, 107; Stokes' Laws of Colonies, 4, 28, 29.

And this is true even with regard to those conquered or ceded colonies which have obtained from the king in council legislatures of their own, and in which, therefore, the power of the crown to make laws has ceased.(1)

The exercise however of this general legislative authority of the British Parliament for the particular purpose of raising a revenue by internal taxation in the colonies, was the famous subject of dissension between this country and her North American provinces, and

(1) B. Edwards (vol. 2, p. 349, 359,) controverts this position, and argues that the restriction in 7 & 8 Will. 3, c. 22, s. 9, (which was repealed by the 6 Geo. 4, c. 105, and is now re-enacted nearly in the same words by the 3 & 4 W. 4, c. 59, s. 56,) prohibiting such colonial laws as are repugnant to any law of Great Britain relative to the plantations, implies a reciprocal obligation on the part of the British Parliament not to interpose its authority in matters to which the colonial assemblies are themselves competent, a fallacy which seems scarcely to deserve refutation. The implied obligation extends no further than this, that parliament will not interfere unless in case of necessity; it is by no mean equivalent to a declaration that parliament will not interfere at all, for that would amount to an unconditional declaration that the colony was independent of the mother country. The right of the British Parliament to legislate for all the colonies, and in the way of internal as well as commercial regulation, is established by the highest legal authorities, (see the cases cited in the last note,) and has also been expressly declared by the act 6 Geo. 3, c. 12, which

(except as to the power of internal taxation, the exercise of which has been abandoned by 18 Geo. 3, c. 12,) is still unrepealed. The same declaration was specially made with regard to Canada by the 31 Geo. 3, c. 31, s. 46, commonly called "The Quebec Act." Indeed on this subject it is sufficient to observe, that the Parliament of Great Britain has in many instances, and during a long succession of years, passed laws for the regulation of the internal government of all plantations (without distinction) dependant on the British crown, (see several of these laws noticed in a subsequent part of this work); and that, except in the case of the rupture with the American provinces, such enactments have been uniformly received and are still acted upon. The exercise of protection, on the one hand, and the right of paramount legislation on the other, must be considered as co-existent. When the necessity for the first ceases, the justification and even the practicability of the other will cease also. At the same time, though there can be no doubt as to the right, it is almost equally clear that that right should be exercised as seldom as possible.

(co-operating with other causes of discontent) ultimately led to their dismemberment from the body of the empire.(2) At an early period of the contest, the authority of the British Parliament in this respect was asserted by the 6 Geo. 3, c. 12, which, after reciting that "several of the Houses of Representatives in his Majesty's colonies and plantations in America, have of late, against law, claimed to themselves, and to the general assemblies of the same, the sole and exclusive right of imposing duties and taxes upon his Majesty's subjects in the said colonies and plantations, and have in pursuance of such claim passed certain votes, resolutions, and orders derogatory to the legislative authority of parliament, and inconsistent with the dependency of the said colonies and plantations upon the Crown of Great Britain," proceeds to declare, "that the said colonies and plantations in America have been, are, and of right ought to be, subordinate unto and dependant upon the Imperial Crown and Parliament of Great Britain. And that the King's Majesty by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain in Parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America subjects to the Crown of Great Britain in all cases whatsoever." And further, "that all resolutions, votes, orders, and proceedings in any of the said colonies and plantations, whereby the power and authority of the Parliament of Great Britain

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(2) But (as observed by an able writer) "even in regard to those taxes which a vain and unprofitable attempt was made to impose upon the formerly existing colonies in North America, they were never dreamt of as a *tribute*, and never spoken of but

in a sense contrary to the very idea of a *tribute*—that of reimbursing to the mother country a part, and no more than a part, of that which they cost her in governing and defending them." Article *Colony* in Supp. to Enc. Brit.



to make laws and statutes as aforesaid, is denied or drawn into question, are, and are hereby declared to be, utterly null and void to all intents and purposes whatsoever."

Before the conclusion of the war, however, the exercise of this obnoxious claim was renounced by another act of the British legislature, 18 Geo. 3, c. 12,(3) usually quoted as the "Declaratory Act." It recites, that "taxation by the Parliament of Great Britain for the purpose of raising a revenue in his Majesty's colonies, provinces, and plantations in North America, has been found by experience to create great uneasinesses and disorders among his Majesty's faithful subjects, who may nevertheless be disposed to acknowledge the justice of contributing to the common defence of the empire, provided such contribution should be raised under the authority of the general court or general assembly of each respective colony, province, or plantation. And whereas, in order as well to remove the said uneasinesses and to quiet the minds of his Majesty's subjects who may be disposed to return to their allegiance, as to restore the peace and welfare of all his Majesty's dominions, it is expedient to declare, that the King and Parliament of Great Britain will not impose any duty, tax, or assessment for the purpose of raising a revenue in any of the colonies, provinces, or plantations." And the act then proceeds to declare, "that from and after the passing of this act the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of his Majesty's colonies, provinces, or

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(3) As to the renunciation of the claim itself, which this statute has been supposed to make, see the observations of Lord Chancellor Brougham, delivered on the second

reading of the Colonial Slavery Abolition Bill, 12th August, 1833. *Mirror of Parl.* p. 3694. And see also 31 Geo. 3, c. 51, commonly called the Quebec Bill.

plantations in North America or the West Indies, except only such duties as it may be expedient to impose for the regulation of commerce, the net produce of such duties to be always paid and applied to and for the use of the colony, province, or plantation in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective general courts or general assemblies of such colonies, provinces, or plantations are ordinarily paid and applied.”(4)

(4) This exception was conformable to the views of the North American provinces themselves at the commencement of the dispute. Franklin states in his examination, “that the authority of parliament was allowed to be valid in all laws, except such as should lay *internal taxes*. It never was disputed in laying duties to regulate commerce.” And again, “I never heard any objection to the right of laying duties to regulate commerce, but a right to lay internal taxes was never supposed to be in parliament, as we are not represented there.” He is then met by the question, whether he could name any act of assembly that made such distinction: to which he answers, “I do not know that there was any, I think there was never an occasion to make any such act till now that you have attempted to tax us. *That* has occasioned resolutions of assembly declaring the distinction.” Being then asked if he could show any kind of difference between the two modes of taxing, he says, “I think the difference is very great. An external tax is a duty laid on commodities imported; that duty is added

to the first cost and other charges on the commodity, and when it is offered to sale makes a part of the price, &c. But an internal tax is forced from the people without their consent, if not laid by their own representatives,” &c. He is then pressed by the objection, whether the payment to the Post-office, which they had long acquiesced in, was not a tax as well as a regulation. He answers “No.—The money paid for the postage of a letter is not of the nature of a tax. It is merely a *quantum meruit* for a service done. No person is compellable to pay the money if he does not choose to receive the service. A man still, as before the act, sends his letter by a servant or special messenger or a friend, if he thinks it cheaper or safer.” And it being afterwards suggested, that at least there could be no difference as to the matter in question between an *excise* and a duty on importation, he says “Yes, a very material one. The sea is yours, you maintain by your fleets the safety of navigation on it, and keep it clear of pirates. You may have therefore a natural and equitable right to some *toll* or duty on

Nor is every act of the British Parliament even within the lawful compass of the legislative authority binding on the colonies, for it results from the principles already stated, that in conquered or ceded settlements acts of parliaments passed before their acquisition have in general no force, unless adopted or incorporated by royal or parliamentary authority, or by act of their own legislatures, either by way of specific enactment, or as part of the general law of the mother country, into their subsequent code.(5) For such colonies remain (as we have seen) in all matters not otherwise provided for, subject to their former laws. But this is open to a very important exception, viz. that of all statutes which are manifestly of universal policy, and intended to affect all our transmarine possessions, at whatever period they shall be acquired, such, for example, as navigation acts, or the acts for abolishing the slave trade and slavery. For such statutes will upon the conquest or cession *ipso facto*, and independently of posterior legislation, be binding upon a conquered or ceded colony.(6) And in colonies acquired by occupancy, the whole then existing law of England, (comprising in general the statute as

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merchandize carried through part of your dominions, towards defraying the expense you are at in ships to maintain the safety of that carriage."

(5) Such adoption or incorporation of the general law of England has, in a great proportion of our settlements, taken place. For in those colonies where legislative assemblies have been established, the royal commissions regulating their constitution, have ordinarily directed that their courts of justice should administer law "as nearly as might be agreeable to the law of

England," which seems to include the statute as well as the common law at that time existing, *i. e.* so much as is applicable to the new settlement. And in some of them the law of England has been expressly adopted by acts of their assemblies. So in some colonies not possessing legislative assemblies, such as Gibraltar, &c. the whole body of English law, as it existed at the time of the acquisition, has been adopted.

(6) See 14 Geo. 3, c. 83, s. 18, as to Canada.

well as the common law,) so far as it may be applicable to the circumstances of each settlement, is in force from the period of their acquisition.

Again, acts passed since the acquisition of a colony, or at least subsequent to the establishment of its legal constitution by royal commission or act of parliament, do not extend to it, unless they appear to have been passed with the intention of being so extended.(7) This intention, however, may appear either by mentioning the colony by name, or by general designation, such as the "colonies," or "the West Indies," or "the dominions of his Majesty," or "the British possessions abroad;" or by reasonable construction, as in the case of navigation acts, acts of revenue and trade, and acts which relate to shipping, all which in general are obligatory on the colonies though not in terms extended to them. And acts of parliament which alter other acts in force in the colonies, are also considered by inference as themselves applying there.(8)

Particular legal constitutions actually prevailing in the British colonies.

II. Having thus considered in a general or abstract point of view, to what laws the colonies are subject, we have now to examine the particular legal constitutions at present prevailing among them.

The usual form of government is under a royal commission, authorizing the person therein named to govern the colony as the king's representative, or deputy, accompanied by instructions from the king in council, regulating the manner in which that duty is to be performed. In some cases, however, the king has granted out a colony to some individual, to hold in the nature of a

(7) 1 Chal. Opin. 197--220; 2 *id.* 1245, 1246; 2 Salk. 411; Stoke's Law of Col. 5, *et seq.*  
 202; 4 Mod. 225; Com. Dig. Navigation, G. 3; 2 P. Wms. 75;  
 1 Black. Com. 108; 2 Ld. Raym. (8) Dwarris, 1st Rep. p. 5, and the authorities before cited.

feudatory principality, with inferior regalities and subordinate powers of legislation, but subject to the sovereignty of the mother country. And there are other instances in which a colony has been erected by charter into a sort of civil corporation, with power to make bye-laws for the interior government of the colony, and with such rights and authorities as have been specially provided in the charter. These three several kinds of constitutions have been distinguished by Blackstone, under the different appellations of *Provincial Establishments*, (9) *Proprietary Governments*, (1) and *Charter Governments*. (2) In the first, the government and council were always named by the King. In the next, the proprietors had a right of appointing governors, subject, however, since the 7 & 8 Wm. 3, c. 22, to the approval of the Crown, and subject to the same oaths and the like penalties as His Majesty's governors and commanders in chief were liable

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(9) *Provincial Establishments*. Their constitutions depended on the respective commissions issued by the crown to the governors, and the instructions which usually accompanied these commissions, under the authority of which provincial assemblies were constituted with the power of making local ordinances not repugnant to the laws of Great Britain. 1 Bl. Com. 108; Stokes' Law of Colonies, 14.

(1) *Proprietary Governments* were granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior regalities and subordinate powers of legislation which formerly belonged to the owners of counties palatine: yet still with these express conditions, that the end for which the grant was made be substantially pursued; and that nothing be at-

tempted which may derogate from the sovereignty of the mother country. 1 Bl. Com. 108; Stokes, 19.

(2) *Charter Governments* were in the nature of civil corporations, with the power of making bye-laws for their own interior regulation, not contrary to the laws of England, and with such rights and authorities as are specially given them in their several charters of incorporation. 1 Bl. Com. 108; Stokes, 20, 21.

These three appellations have been given to the three sorts of governments. (1 Bl. Com. 109; Montefiori, Dict. tit. Plantation; Stokes' Law of Colonies, 13, 14; Rees' Cyclop. tit. Charter Governments.) To the first of them the title of King's Governments, (Edwards' Hist. West Indies, vol. 2, p. 315,) and that of Royal Governments (Eur. Sett. vol. 2, p. 298,) have also been applied.

to. In the last, or charter governments, the people sometimes, and sometimes the King, (by special reservation in the charter, as in the case of Massachusetts,) appointed the governor, but the people elected the house of representatives, and these latter elected the council, which resembled, in many respects, an upper house of parliament. By one writer (*Europ. Sett.* vol. 2, p. 300,) the last form of government is thus described; "It is to all purposes a mere democracy; they elect every one of their own officers from the highest to the lowest; displace them at pleasure, and the laws which they enact are valid without the royal approbation."

The colonies now belonging to the Crown of Great Britain, exclusive of those under the government of the East India Company, (to which this work does not profess to extend,) are as follows:—

In the West Indies and South America:—

1. Antigua, including Barbuda.
2. Barbadoes.
3. British Guiana. (3)
4. Dominica.
5. Grenada.
6. Jamaica.
7. Montserrat.
8. Nevis.
9. St. Christopher's, including Anguilla.
10. St. Lucia.
11. St. Vincent.
12. Tobago.

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(3) See (in the Appendix) the commission to Major General D'Urban, dated 4th of March, 1831, by which the united colonies of Demerara and Essequibo and the colony of Berbice were consolidated into one colony, to be called "British

Guiana," and also the orders in council of the 23d of April and 20th of June, 1831, establishing new courts jointly to administer justice in British Guiana, Trinidad, and St. Lucia.

13. Trinidad.
14. Virgin Islands.

In North America, continental and insular:—

1. Bahama Islands.
2. The Bermuda, or Somers' Islands.
3. Canada, Lower.
4. Canada, Upper.
5. Prince Edward's Island.
6. New Brunswick.
7. Newfoundland, with part of Labrador.
8. Nova Scotia, including Cape Breton.

In Africa:—

1. Cape of Good Hope.
2. Sierra Leone, with the settlements on the Gold Coast.

In the Indian Seas:—

1. Ceylon.
2. Mauritius, with the Seychelles.

In the South Seas:—

1. New South Wales, with Norfolk Island.
2. Van Dieman's Land.
3. Western Australia.

And in addition to these, may be enumerated the following British possessions, which are said not strictly to fall within the definition of colonies.

In Europe:—

1. Gibraltar.
2. Heligoland.
3. Malta. (4)

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(4) Malta to be deemed in Europe, 3 & 4 W. 4, c. 52, s. 120. In this enumeration of the colonies nothing has been said of Honduras, which has been decided expressly not to be a colony (see *ante*, p. 2, n. 1.) Western Australia, mentioned

in the above list, was created a colony by the 10 Geo. 4, c. 22, and the mode of its government there provided for. See more on the subject of these settlements in the Appendix.

These are almost all of the class above described, as *Provincial Establishments*, there being at present no *Proprietary Government*, nor, with the exception of Sierra Leone, (if that be an exception,) any *Charter Government* among the colonial dependencies of Great Britain.(5)

Of Sierra Leone,  
and the settle-  
ments on the  
Gold Coast.

Sierra Leone ought, perhaps, to be designated as a charter government, for, in point of form, it is by charter, and not under the royal commission to its governor, that its constitution has been established. Considered as to the mode of its acquisition too, the case of this colony is peculiar, and entitles it to be separately noticed, for it belongs not properly to the class of those obtained by conquest or cession, nor of those acquired by occupancy, though it partakes more of the nature of a colony acquired by occupancy than of any other. It was purchased from the native chiefs by certain private English subjects, who were induced to found a settlement there, with the benevolent object of repressing the slave trade and promoting the civilization of the African continent. With this view they also obtained, by act of parliament, (31 Geo. 3, c. 55,) a charter of incorporation, and authority was given to the King to grant to the company the exclusive right of holding the peninsula of Sierra Leone, and of purchasing lands from the chieftains of the country: after an experiment of some years, they abandoned

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(5) This has not always been the case. The Island of Barbadoes was formerly granted to the Earl of Carlisle, and that of St. Lucia to the Duke of Montague, and both were in the nature of proprietary governments. Carolina was formerly a government of the same kind, lodged in eight proprietaries. New Jersey, Pennsylvania and Maryland, were also proprietary governments. (European Settlements, vol. 2, p. 299.)

The form of a Charter Government originally prevailed in all the provinces of New England, and at a later period was still established in two of them, — Connecticut and Rhode Island. These New England governments were those which Mr. Burke, in the passage above quoted, described as “mere democracies.” (European Settlements, vol. 2, p. 300.)



their project, and surrendered their charter to the Crown. By 47 Geo. 3, sess. 2, c. 44, the Crown was authorized to accept this surrender, and a new charter then issued, introducing such alterations into the constitution of the settlement as the new state of things required. By this charter, the power of making laws is vested in the governor and council of the colony. Afterwards, by 1 & 2 Geo. 4, c. 28, sect. 3, His Majesty was empowered to order and direct that the forts and settlements on the Gold Coast of Africa, then held by British subjects, and any possessions on the west coast of Africa, between the twentieth degree of north latitude and the twentieth degree of south latitude, which then did, or at any time thereafter, might belong to His Majesty, should be annexed to, or made dependencies on the colony of Sierra Leone, after which, they should be subject to all laws ordained by the governor and council of the colony, and not disallowed by His Majesty, in the same manner as if they had originally formed part of Sierra Leone. The annexation so authorized has accordingly since been directed by order in council. (6)

Three other of the colonies, viz. Newfoundland, New South Wales, and Van Dieman's Land, were acquired by discovery or simple occupation, and are consequently not subject to the legislation of the Crown, but are governed by the general law of England as it existed at the period of their acquirement, subject to such regulations as the British Parliament has since specially provided for them. Of the acts regulating these colonies as to the administration of justice, the following are the principal: "An Act for the better administration of justice in Newfoundland, and for other purposes," 5 Geo. 4,

Of the colonies acquired by discovery or occupation.

(6) His Majesty, by letters patent, granted a *Charter of Justice* to Sierra Leone, establishing courts

of judicature with regulations as to the proceedings therein, and appeals therefrom, &c.

c. 67, (7) "An Act to provide until the 1st day of July, 1827, and until the end of the next session of Parliament, for the better administration of justice in New South Wales and Van Dieman's Land, and for the more effectual government thereof, and for other purposes relating thereto." 4 Geo. 4, c. 96. (8)

Of the colonies acquired by conquest, and still subject to the legislation of the Crown.

There are other colonies which having been originally acquired by conquest or cession, and having yet obtained no grant of a representative legislative assembly, are

(7) For previous acts, see Reeves' History of Newfoundland, which contains a complete history of the constitution of this colony. See also an act as to celebration of marriages in Newfoundland, 5 G. 4, c. 68.

By the 5 G. 4, c. 67, his majesty was empowered to issue letters patent instituting courts of judicature in this colony, with rules as to proceedings therein and appeals therefrom, &c. A *Charter of Justice* was accordingly issued for these purposes, dated 19th of September, 1825. (See a copy of it in the Appendix.) The supreme court was to have the same jurisdiction as the courts of King's Bench, Common Pleas, Exchequer, and Chancery have in England (s. 1); the chief and two assistant judges were to be barristers of three years standing, (s. 2) and the court was to have the jurisdiction of courts of vice-admiralty, (s. 4) and to grant letters of administration and probates of wills. (s. 5) The leading provisions of the act are recited in the *Charter of Justice*. Newfoundland has since received a grant of the power to hold a legislative assembly; and by the 2 & 3 W. 4, c. 78, s. 1, the authority to repeal or alter the two acts above

referred to, which till then are to continue in full force. See the instructions to the governor, and the proclamation of the king accompanying them, dated 26th of July, 1832. (A copy is in the Appendix.)

(8) This is continued by an act of 9 G. 4, c. 83, until the 31st of December, 1836.

By the 4 G. 4, c. 96, his majesty was empowered to issue letters patent instituting courts of judicature in New South Wales and Van Dieman's Land, with rules as to proceedings therein, and appeals therefrom, &c. A *Charter of Justice* was accordingly issued for these purposes. See a copy of it in the Appendix.

The supreme courts of New South Wales and Van Dieman's Land, are by the 9 Geo. 4, c. 83, ss. 3, 4, 11 & 12, to have the same jurisdiction in those colonies as the courts of King's Bench, Common Pleas, and Exchequer have in England, and are besides to have jurisdiction over offences committed at sea, or in the islands in the Indian and Pacific Oceans, and to have equitable and ecclesiastical jurisdiction within those colonies, and their dependencies.

still subject to the legislation of the Crown. These are St. Lucia, Trinidad, the newly constituted colony of British Guiana, the Cape of Good Hope, Mauritius, Ceylon, and the European establishments of Gibraltar, Malta, and Heligoland.

In colonies so acquired it has already been shown that the law in force at the time of the acquisition, continues to prevail till altered by new regulations of the Crown or Parliament. Accordingly in St. Lucia, the ancient code of France, as it existed before the promulgation of the Code Napoleon, is still the law of the colony. In Trinidad the law of Spain, as established there at the time of the conquest by Great Britain in 1797, still prevails. In British Guiana, the Cape of Good Hope, and Ceylon, they retain the Roman Dutch Law of the Seven United Provinces, and of the Batavian Republic. In Mauritius are received four of the five codes into which the Code Napoleon is divided, viz. the Code Civile, the Code de Procedure, the Code de Commerce, and the Code d'Instruction Criminelle. And in criminal cases this colony is subject to the old French law. (9) It is to be observed, however, with respect to all these colonies formerly belonging to France, to Spain, and to Holland, that the law in force in each of them at the time of its conquest, and still retained there, though formed upon the basis of that of the parent state, differed widely from it in many particulars. By each of these states a special system of law had been established for the government of its colonies. Thus the Kings of France had promulgated or sanctioned various ordinances for their West India possessions, which are collected together under the title of the Code de la Mar-

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(9) The Code Pénal of Napoleon is not in force there, because it was not promulgated in France until af- ter the conquest of the island by Great Britain.

tinique. The Kings of Spain, with the advice of the council of the Indies, had established a body of laws, intituled *Leyes de las Indias*, or *Recopilacion de las Indias*. The Seven United Provinces had issued separate codes for the government of their western and eastern colonies, at the suggestion of the different commercial companies by which those colonies were settled. Nevertheless, these colonial statutes of France, Holland, and Spain, profess to provide only for cases of local peculiarity, leaving the general rules and principles of law in all other instances to be collected from the code of the parent state.

With respect to the European establishments, Malta (1) is governed (as before its acquisition) by a set of local ordinances called the *Maltese Code*. But Gibraltar is in no degree now subject to the law of Spain, for by a *Charter of Justice*, (2) granted by the Crown to that settlement in the fifty-seventh year of Geo. 3, a court of justice was established there, directed to administer justice as nearly as might be according to the laws of England. And Heligoland is a mere military fortress, and can hardly be said to have any regular system of civil government.

While such are in a general view the legal institutions prevalent in each of the colonies now under consideration, it is at the same time to be understood that each of them has been subjected since its conquest by Great Britain to many new regulations, modifying in various particulars the former law. These changes have been introduced either by acts of parliament, or by order of

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(1) Malta is not a mere military post, for considerable produce is raised and exported by the inhabitants. (Maccull. Dict. of Com., art.

"Malta.") But it has never been settled by British subjects.

(2) See a copy of it in the Appendix. See also *ante*, n. 1, p. 1.

the King in Council, or by ordinances of the local legislature subsequently confirmed by His Majesty. (3)

In each of the colonies which we have hitherto had occasion to notice, whether acquired by conquest or otherwise, there exists, with powers more or less extensive, a local legislature. In general the local power of making laws is vested in the governor, acting with the advice of a council of government. These councils are established by the governor's commission and by his general instructions issued under the signet and sign manual, with the advice of the privy council. This method prevailed in St. Lucia, Trinidad, Berbice, (4) the Cape of Good Hope, Mauritius, Ceylon, Gibraltar, and Malta. In Trinidad, however, the local laws are promulgated in the name of the governor alone, without any express reference to the advice of the council,—a peculiarity which is to be attributed to a corresponding peculiarity in the instructions to the governor of that colony. The ordinances made by the governors and councils of these colonies, are of course subject to the confirmation or disallowance of the King; and the universal rule is, that no ordinance of this nature shall take effect, or become binding within the colony until so confirmed, except in cases of peculiar urgency, in which the governors are authorized to give immediate execution to their laws. It is also a restriction imposed by the governor's commission and instructions, that the laws

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(3) And some of them have also received *Charters of Justice* under letters patent from the crown, imposing in each a complete system for the administration of the law. See these documents in the Appendix.

(4) "The separate constitution and form of civil government heretofore established and in use in the

said colony of Berbice, we do hereby abrogate and dissolve, and do declare that the same hath become, and henceforth shall be extinct and merged in the government of the colony of British Guiana." Commission of Major Gen. D'Urban, dated 4th March, 1831, (see it in the Appendix.)

made shall not be repugnant to the law of England. (5) The local legislature of Demerara stands upon ground peculiar to itself. (6) The Court of Policy is one of the ancient institutions of that colony, and its powers appear formerly to have been very limited. But upon the capitulation it was stipulated by the colonists that no alterations should be made in their laws except with the consent of the Court of Policy, as the local legislature. The expression, it may be presumed, was not inadvertently used by the colonists, although the full effect of it was probably not perceived by the commander of the British forces. It assumed, with very little real foundation, the fact that the Court of Policy was the local legislature. Upon the authority of this language, however, the Court of Policy has ever since the capitulation assumed and exercised legislative powers of the most extensive nature. In the year 1825, the validity of its pretensions in this respect appears to have been called in question, for in that year an order of the King in Council was made by which all the existing ordinances of the Court of Policy were declared to be in force until the end of the year 1826, and until that time the council was to continue in the exercise of its legislative functions, various provisions being made for reserving to the King in Council the right of disallowing any existing or future laws of the court. Before the expiration of the year 1826, this law appears to have been continued for another year. These orders in council expressly state that the recognition of the powers exercised by the Court of Policy in making laws,

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(5) This restriction is also enforced by statute (3 & 4 W. 4, c. 59, s. 56, re-enacting s. 9 of 7 & 8 W. 3, c. 22,) with regard to the laws of all colonies whatever. See however, an exception to this rule in the case of Lower

Canada, established by 1 W. 4, c. 20.

(6) That legislature has now become the legislature of the new colony of British Guiana. (See Gov. D'Urban's Commission in the Appendix.)

is a measure merely temporary, and that some other method is to be substituted as soon as the necessary information can be procured. The commission to General D'Urban, by which the united colony of British Guiana is now constituted, has not, however, carried the intention thus indicated into effect, but speaks of the Court of Policy as the existing local legislature of the colony.

The remaining colonies, forming by far the most numerous class, (and comprising a large proportion of the West India islands,) were originally acquired by conquest or cession, but having received constitutions under commissions from the Crown, comprising the power of framing laws for themselves in representative assemblies, are no longer subject to the legislation of the King in Council.

Of the colonies acquired by conquest, but not subject to legislation by the crown.

The form of the Constitution enjoyed by the latter class is in all respects as closely modelled, as local circumstances permitted, upon that of England; and being therefore substantially the same in each colony, admits of one general description. To this description we now proceed; and as it is applicable to so many different settlements, it shall be given with some particularity of detail. (7)

Their Constitutions.

A commission, in the form of letters-patent under the great seal of Great Britain, accompanied by instructions signed by the King in Council, but not under seal, is directed to some individual as Governor, appointing him to govern the colony as the King's representative or

(7) This description is found in a form almost entirely suitable to the purpose in Edwards's History of the West Indies, (vol. 2, 315, et seq.) Much has therefore been borrowed from that writer, whose accuracy may be relied upon, where

his prejudices as a colonist do not interfere. Another writer, (Stokes on the British Colonies,) and the Reports of the West India Commissioners, have also been carefully consulted.

deputy, and entrusting him with the supreme executive authority, but naming certain persons, selected from those who have the best fortunes and most considerable influence in the colony, as his council of state, to assist him in his deliberations. He is also directed to summon, from time to time, among the inhabitants, a representative assembly, who, with the concurrence of the governor and of the council, are to have power to make laws suited to the exigencies of the colony, but (as the commission usually directs) agreeable as nearly as may be to the laws of England. The commission and instructions, when first issued in respect of any colony, have also commonly authorised the establishment of such courts of justice as might be found necessary or expedient, and have provided that the law to be administered in them shall be as nearly as possible conformable to that of England.

Of the Govern-  
nor.

The rights and duties of the Governor, as expressly defined by the commission and instructions, or settled by constant usage and established construction, are as follows:

He receives by courtesy the title of Excellency.— He is Captain-General and Commander-in-Chief; and if he happens to be a military man, which is very commonly the case, he has the actual command of all the land forces within his government; but if he is a civilian, the command in the field is of course vested in a military officer. He commands the militia, and commissions all its officers. The chief-justice of the chief common law court is generally appointed by the Crown, but the governor issues the commissions for the appointment of the assistant or puisne judges. He nominates and supersedes the custodes of the several parishes, justices of the peace, and other subordinate civil officers;



but in respect of some of the above appointments and dismissions, he is required to ask the advice of his council. He is empowered to suspend any of the members of his council (8) for misconduct, till the King's pleasure be known, transmitting his reasons to England; and if the board is by this or other means reduced below a certain number, he may, at least to a limited extent, fill up the vacancy *pro tempore*. (9) He has authority, with advice of his council, to summon the Assemblies. He appoints the place of their meeting, and when met, he

(8) By the instructions to the Governor of Newfoundland, dated 26th July, 1832, (Ho. of Com. Paper, 704), the governor is ordered (s. 9) neither "to augment nor diminish the number of the members of the council, nor to suspend any of them without good and sufficient cause, nor without the consent of the majority of the said council, signified in council, after due examination of the charge against such councillor, and his answer thereunto." A somewhat similar provision is contained in the 45th sec. of the supplementary commission to the Governor of Ceylon, issued on the 20th March, 1833. It is believed, however, that these restrictions on the Governor's power are of very recent date, and that when Mr. Edwards and Mr. Stokes wrote his authority was as unlimited as is stated in the text. The latter writer indeed gives (p. 150) a form of a governor's commission, which he intimates is an authentic copy of an existing commission, having only the names of persons and places omitted. It contains these words: "and we do hereby give and grant unto you full power and authority

to suspend any of the members of our said council from sitting, voting, or assisting therein, if you shall find just cause for so doing." From the recital contained in the 45th section of the supplementary commission above mentioned, it appears that the original commission conferred an equally absolute power; and even in the instructions to the Governor of Newfoundland it is said, "if it should happen that you should have reasons for suspending any of the members of our said council, not fit to be communicated to our said council, you may in that case suspend such member without their consent." But the Governor is immediately to send an account of his proceedings to the Secretary of State, "together with his reasons at large for such suspension."

(9) By the commission to the governor of Newfoundland, he is empowered to fill up vacancies occasioned by death or absence, to the number of three, and no more. Sec. 7, Instructions, dated 26th July, 1832. Parliamentary Paper, No. 704.

possesses a negative voice in the legislature ; for without his consent no bill passes into a law ; and (except in certain colonies where acts have been passed making permanent regulations as to the times of meeting and sitting of the legislature) he may, from time to time, at his own discretion, adjourn, (1) prorogue, and dissolve the Assemblies. He has the disposal of all such civil employments as the Crown does not dispose of; and with respect to such offices as are usually filled up by the British government, if vacancies happen, the governor appoints *pro tempore*, and the persons so appointed are said to be entitled to all the emoluments, until they are superseded by the King's appointment of

(1) This authority in the Governor to adjourn a Representative Assembly appears at first quite irreconcilable with English notions of the rights and privileges of such an assembly. It is, however, thus provided for in a governor's commission:—"And to the end that nothing may be passed or done in our said council or assembly to the prejudice of us, our heirs, or successors, we will and ordain that you the said A. B. shall have and enjoy a negative voice in the making and passing of all laws, statutes, and ordinances as aforesaid, and you shall and may likewise, from time to time, as you shall judge it necessary, adjourn, prorogue, and dissolve all general assemblies as aforesaid."—Stokes, 156.

Mr. Stokes asserts, (p. 242), but the words of the commission do not quite bear out the assertion, that "every governor is forbid to suffer the assembly to adjourn itself." The reason for vesting this power of adjourning the assembly in the go-

vernor is thus stated in an opinion of Attorney-General Pratt upon a question as to the powers of the council and assembly of Maryland.

"Our House of Commons stands upon its own laws, the *Lex Parliamentum*, whereas Assemblies in the colonies are regulated by their respective charters, usages, and the common law of England, and will never be allowed to assume those privileges which the House of Commons are entitled to justly here, upon principles that neither can nor must be applied to the Assemblies of the colonies."—1 Chal. Op. 263-4.

A similar opinion is expressed by Mr. West (*id.* 232, *et seq.*) on a general question as to a governor's right to prorogue an Assembly under adjournment without first allowing them to meet according to such adjournment, and again by Attorney and Solicitor-Generals Murray and Lloyd, on a dispute as to the privileges of the Jamaica Assembly. *Id.* 296.

others, and until the persons nominated to supersede them arrive in the colony. (2) The governor claims the privilege also in extraordinary cases, and in some colonies has by the terms of his commission, the right of suspending, for misconduct, such civil officers even as act immediately under the King's authority or by commission from the boards of treasury and admiralty, in high and lucrative employment, (such as the attorney and advocate-general, the collectors of the customs, &c.) and of nominating other persons to act in their room until the King's pleasure shall be known therein. To all which is added authority, when he shall judge any offender in criminal matters a fit object of mercy, to extend the King's pardon to him, (3) except only in cases of murder and high treason; and even in these cases the governor is permitted to re-  
prieve until the signification of the royal pleasure.

The governor has also the custody of the public seal of the colony, and in most cases presides solely in the High Court of Chancery. (4) In some few islands the council sit as judges with the governor in the Court of

(2) Stokes, 134. See an exception to this rule noticed *post*, p. 34, n. 9.

(3) In some of the colonies it was the practice, and was said to be the law, to put into immediate execution a sentence of death against a negro, and to hang him on the nearest tree. The West India commissioners seem to have entertained some doubts as to the legality of this practice when they were examining into the administration of justice in Barbadoes, (see 1 Rep. 49, 218,) and in Grenada, observing upon the words of the Slave Act, which says that sentence must *be passed upon conviction, and* "carried into effect forthwith," they

appear inclined to adopt the construction put on that act by the chief justice, who stated that in his opinion "the words of the act required only an immediate sentence, and not an immediate execution, for otherwise it would be inconsistent with the governor's power to re-  
prieve, or the king's power to pardon." (1 Rep. 106, 218.)

(4) This was matter of universal complaint by the colonists to the commissioners, who, in every instance, recommended (and most frequently in accordance with the wishes of the governors themselves) *that this part of a governor's duty* should be transferred to a barrister

Chancery. Process however is issued by him alone, and *tested* in his name; and in general, the governor exercises within his jurisdiction the same extensive powers as are possessed by the Lord High Chancellor of Great Britain.

The governor is also Ordinary, (5) and as such has the power of granting probate of wills, and administration of the effects of persons dying intestate, and of granting licenses for marriages, and licenses for schools, &c. Certain ecclesiastical jurisdictions have by late acts of Assembly been vested in the colonial bishops, of whom two have been within a few years past appointed for

appointed from England. The change, thus earnestly desired and strongly recommended, will in all probability be effected at the earliest possible opportunity, as, according to the description of the commissioners, it would be viewed in every colony as a most pleasing proof of his Majesty's paternal regard for the welfare of the colonists. (See the Reports of the West India Commissioners *passim*.)

(5) A similar change has also been recommended with respect to this court, or that the duties of the Ordinary should be performed by a judge of some other court, who was appointed from England. The instructions to the Governor of Newfoundland (House of Commons' Paper, No. 704,) would seem to intimate that the Bishop of Nova Scotia, within whose diocese Newfoundland is situated, must now exercise the powers of an ecclesiastical judge within that diocese, for the governor (s. 49) is directed to be "aiding and assisting the said bishop in the exercise of his jurisdiction, spiritual

and ecclesiastical, within the said colonies; excepting only the granting licenses for marriages and probates of wills." In the 53d section the power of granting these, "commonly called the office of ordinary," is expressly restricted to the governor alone. The exception of these from the usual powers of the bishop would imply, according to the well-known rule of legal construction, that he possessed all the other powers usually deemed in England incident to his office. Yet the act of the Assembly of the Bahamas, (6 G. 4, c. 12,) recognising the appointment of the Bishop of Jamaica, speaks only of "his ecclesiastical jurisdiction over the clergy," and declares that "all laws, ordinances, and canons ecclesiastical, now in force in England, so far as the same relate to jurisdiction over the clergy therein, shall be in force in those islands;" and the rights of the governor as Ordinary of those islands are by the same act expressly preserved. (3 Rep. W. I. C. 2d series, p. 55.)

the West Indies, viz. a "Bishop of Barbadoes and the Leeward Islands," and a Bishop of Jamaica, whose jurisdiction also extends over the Bahamas and Honduras. The Bermudas and Newfoundland are under the see of Nova Scotia.

The governor also presides in the Court of Error, (of which he and the council are judges,) to hear and determine all appeals in the nature of writs of error, from the superior courts of common law. (6)

He is also vice-admiral within the extent of his government. As such he is entitled to the rights of jetsam, flotsam, &c., and in time of war he issues his warrant to the judge of the Court of Vice-Admiralty to grant commissions to privateers.

Lastly, a colonial governor, besides various emoluments arising from fines, fees, forfeitures, and escheats, has an annual provision settled upon him by act of Assembly for the whole term of his administration in the colony. (7) For, in order that he may not be tempted to prostitute the dignity of his station by improper condescensions to leading men in the Assembly, he is restrained by his instructions from accepting any salary, unless the same be settled upon him by law within the space of one year from his entrance upon the government, and expressly made irrevocable during the whole term of his administration of it.

(6) In consequence of this arrangement the decision of a regular bred lawyer comes upon appeal before a military officer and a small number of gentlemen, who, though highly honourable and intelligent, labour under the disadvantage of the want of a professional education. The result is a want of confidence among the colonists as to the uniform admi-

nistration of the rules of justice. The commissioners, in every instance, recommend that this practice should be altered. (Reports, W. I. C.)

(7) In many colonies part of the governor's salary is paid by the crown, viz. out of the  $4\frac{1}{2}$  per cent. fund, or is provided for by the votes of the House of Commons.

On the whole then, it appears that the powers with which colonial governors are intrusted are most ample and transcendent, and more extensive than those which the laws of England allow the sovereign himself to exercise.

In a government comprehending several islands (like that under which the Leeward Charibbean Islands were formerly consolidated) there was commonly appointed, together with the captain-general, or chief governor, a lieutenant-governor, who was next in succession. (8) Such officers are not usually appointed now. The instructions to the governor of Newfoundland, however, dated 26th July, 1832, speak of such an officer, and contain a provision for carrying on the government in case of the death or absence of the governor, if "there be at that time no person commissioned as lieutenant-governor."

Where an officer holding this rank is appointed he usually acts as lieutenant-governor of one of the islands included within the general government, each of which, in the absence of the captain-general from that particular island, has its affairs administered by him, or by the president of the council, most commonly the latter.

On the resignation, or absence on leave, of the captain-general, a lieutenant-governor, if not present, is frequently sent over, who then succeeds to the supreme command and receives an allowance for the support of the dignity of the government. (9)

(8) In the North American Colonies, besides the governor in chief, (who resides in Lower Canada,) there is a lieutenant-governor. And there is an officer of that rank, besides the governor in chief, at the Cape, at Ceylon, and at New South Wales; and such an officer is mentioned in the commission to General

D'Urban, constituting him Governor of British Guiana, as a person who "may be appointed to be our lieutenant-governor of our said colony."

(9) "One full moiety of the salary, and of all perquisites and emoluments whatever." (Instructions to the Governor of Newfoundland, 26th July, 1832, s. 64.)

A governor, lieutenant-general, or lieutenant-governor, holds office only during the King's pleasure, and in case of oppression or other misconduct, any individual aggrieved may lay complaint against either of them before His Majesty in Council, and petition for his removal. (1) The Court of King's Bench in England also has cognizance of offences committed by colonial governors, or they may be tried before commissioners assigned for that purpose by His Majesty, (2) and their conduct is of course examinable, where other remedies fail, in Parliament.

With respect to the Council, its several members are Of the Council. in the first instance (as we have seen) nominated in the instructions accompanying the governor's commission; and, in case of vacancy, the new appointment is by warrant under the signet and sign manual, countersigned by the Secretary of State, and directed to the governor. Every governor is expressly instructed to transmit from time to time to His Majesty, the names of such of the principal inhabitants as are best qualified to supply vacancies in the council; (3) and it is rarely that any person is appointed who is not previously recommended by the governor. (4) In Jamaica their full complement is twelve; in some of the smaller West India Islands ten; and in case of as many vacancies by death, absence, or suspension, as reduce the board to less than a number specially limited in each colony, the governor or commander-in-chief is empowered to fill up to that number,

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(1) *Mostyn v. Fabrigas*, Cowp. 175. It seems, however, that the power of the King in Council extends to removal only, and not to further punishment. (*European Settlements*, vol. 2, p. 302, and the case above quoted.)

(2) By virtue of the statutes 11 & 12 W. 3, c. 12, and 42 G. 3, c. 85. Vide 8 East, 31.

(3) *Instructions to the Governor of Newfoundland*, s. 6.

(4) *Edwards*, vol. 2, p. 338.

but no farther, and persons so appointed only act as councillors till the pleasure of the crown is known. (5) Their privileges, powers, and offices, are these—

First, they are by courtesy severally addressed in the colonies as "Honourable;" they take precedence next to the commander-in-chief; and on the death or absence of the governor, lieutenant-general, and lieutenant-governor, the eldest member of the council succeeds to the government, under the title of President of the Council. Secondly, they are a council of state, the governor, or commander-in-chief presiding in person, to whom they stand in the same relation as the Privy Council in Great Britain does to the Sovereign. But although every colonial governor is directed by his instructions to advise with his council on most occasions, it does not appear that, in his executive capacity, he is absolutely bound to abide by their advice. (6) It is conceived that he is competent to act, in most cases, though in the absence of any special provision for that purpose, not only without, but even against their advice; but that his power to do so is confined to cases where the council act as part of the executive government, and not as part of the legislative government. His opposition to them in this latter character would consist of the

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(5) See the form of the commission, Stokes, p. 154.

(6) In the supplementary commission to the Governor of the Island of Ceylon (House of Commons' Papers for 1833, No. 698,) are the following words, "And we do authorize you, in your discretion, and if it shall in any case appear right so to do, to act in the exercise of the power committed to you by your said commission, in opposition to the advice which may in any such case be given

to you by the members of your said executive council." There is also a legislative council appointed in that island by that commission, but there appears to be no such privilege conferred on the governor with reference to the advice of the latter council, as their functions more resemble those of the Parliament than of the Privy Council. He is required, as soon as convenient, to transmit his reasons for such proceedings.



exercise of his veto on the ordinances they might desire to pass. He may, it is true, by so doing, incur the King's displeasure, but his proceedings are nevertheless efficient and legal within the colony. Thirdly, they are named in every commission of the peace, as justices throughout the colony to which they belong. Fourthly, the Council, together with the governor, or commander-in-chief, sit as judges in the court of error or appeal in civil cases from the courts of common law, but not from the Court of Chancery; and in some of the islands some of the members sit with the governor in the Court of Chancery as assistant commissioners of the great seal.

Lastly, the Council is a constituent part of the legislature, their consent being necessary in the enacting of laws. In this capacity of legislators they sit as the upper house, and in most of the colonies distinct from the governor. (7) They have the power of originating and rejecting bills, and of proposing amendments, (except in the case of money bills). (8) They claim privilege of parliament, order the attendance of persons and the production of papers and records, and convict for contempts, enter protests on their journals, after the manner of the House of Peers, and in some of the colonies have their chaplain, clerk, *usher of the black rod*, &c. (9)

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(7) By the instructions given to the Governor of Newfoundland, dated 26th July, 1832, (House of Commons' Papers for 1832, No. 704,) he is directed in what manner to carry into effect his commission as to forming a House of Assembly in that island. By the despatch accompanying those instructions and printed with it, the Council, it is said, "will

participate with the Assembly in the enactment of laws." The reasons against this practice and the evils of it are forcibly stated, but the despatch declares that "the compensation which might atone for these evils is not obtained" by the opposite practice.

(8) Edwards, vol. 2, p. 332-3.

(9) Edwards, vol. 2, p. 322, et seq. where may be seen an able state-

A territorial qualification does not seem to be indispensably necessary to their appointment, as in the case of members chosen into the Assembly. (1) The members of the council are for misconduct subject to suspension by the governor till the King's pleasure be known, and the governor transmits the reasons of the suspension to England for His Majesty's information.

It is said too that they may be removed by the governor, with the concurrence of the majority of the council in council assembled, (2) but in the cases before referred to, suspension, not removal from office, is all that is mentioned. They do not derive any emolument from their situations. (3)

Of the House of  
Assembly.

The constitution of the *House of Assembly* is in all respects copied, as nearly as circumstances will permit, from the example of the Parliament of Great Britain. The freeholders are assembled in each town or parish respectively by the King's writ; their suffrages are taken by an officer of the crown, and the persons elected, who, as well as their electors, in some colonies at least, must possess a certain landed qualification, (1 Edw. 221-2), (4) are afterwards commanded by royal

ment and refutation of the prudential and constitutional objections to which this branch of the plan of colonial legislature has been supposed to be open.

(1) Edwards, vol. 2, p. 335.

(2) 1 Rep. W. I. C. p. 19, and see ante, p. 29, n. 8.

(3) 1 Rep. W. I. C. p. 19.

(4) By a proclamation accompanying the instructions to the governor of Newfoundland, dated 26th July, 1832, the qualification of the persons to be elected and the electors are thus stated:—"Every

man of the full age of 21 years and upwards, of sound understanding, and being our natural born subject, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within our said island as owner or tenant thereof, shall be eligible to be a member of the said House of Assembly." The same provisions apply to the elector, with the exception that his occupation of "a

proclamation to meet together at a certain time and place in the proclamation named, to frame statutes and ordinances for the public safety. When met, the oaths of allegiance, &c., are administered unto each of them; and a speaker being chosen and approved, the session opens by a speech from the King's representative. The Assembly then proceed, as a grand provincial inquest, to hear grievances, and to correct such public abuses as are not cognizable before inferior tribunals. They commit for contempts, and the courts of law have refused to discharge persons committed by the speaker's warrant. They examine and controul the accounts of the public treasurer. They vote such supplies, lay such taxes, and frame such laws, statutes, and ordinances, as the exigencies of the province or colony require. Jointly with the governor and council they exercise the highest acts of legislation; for their penal laws, which the judges are sworn to execute, extend even to life, many persons having suffered death under laws passed in the colonies, even before they had received the royal assent at home. (5)

dwelling-house" is only required to be for one year. House of Commons Paper, 1832, No. 704.

(5) When any bill has passed the two houses, it comes before the governor, who represents the King, and gives his assent or negative as he thinks proper. It now acquires the force of a law, but it must be afterwards transmitted to the King and Council in England, where it may still receive a negative, that takes away all its effect. Eur. Sett. in America, II. 298.

The plan of allowing legislative assemblies to the colonies has been

naturally extolled by those who derive the benefit. In a conversation between Lord Chatham and Franklin, we find that celebrated colonial agent making this remark, "that in former cases great empires had crumbled first at their extremities, from this cause, that countries remote from the seat and eye of government, which therefore could not well understand their affairs for want of full and true information, had never been well governed, but had been oppressed by bad governors, on presumption that complaint was difficult to be made and sup-

The ordinances thus framed by the legislative body, with concurrence of the governor and council, are called *Acts of Assembly*, and constitute the local statute law of the colony. They are subject by statute 3 & 4 W. 4, c. 59, s. 56, to this provision, that "all laws, bye-laws, usages or customs at the time of the passing of the act, or which hereafter shall be in practice, or endeavoured or pretended to be in force or practice, in any of the British possessions in America, which are in any wise repugnant to this act, or to any act of parliament made or hereafter to be made in the United Kingdom, so far as such act shall relate to and mention the said possessions, are and shall be null and void to all intents and purposes whatsoever." (6)

ported against them at such a distance. Hence such governors had been encouraged to go on till their oppressions became intolerable; but that this empire had happily formed, and long been in the practice of a method whereby every province was well governed, being trusted, in a great measure, with the government of itself; and that hence had arisen such satisfaction in the subjects, and such encouragement to new settlements, that, had it not been for the late wrong politics, (which would have Parliament to be *omnipotent*, though it ought not to be so, unless it would at the same time be *omniscient*;) we might have gone on extending our western empire, adding province to province, as far as the South Sea." *Memoirs of Franklin*.

(6) This is a re-enactment almost in the same words of a provision repealed by 6 Geo. 4, c. 105, viz. that of 7 & 8 W. 3, c. 22, sect. 9,

upon the construction of which last-mentioned statute B. Edwards thinks that it is meant to extend only to laws *regulating trade*, vol. 2, p. 362, (note); but there seems to be no foundation for this opinion. The words of the enactment are as follows:—"And it is further enacted, that all laws, by-laws, usages or customs at this time, or which hereafter shall be in practice, or endeavoured or pretended to be in force or practice in any of the said plantations which are in any wise repugnant to the beforementioned laws, or any of them," (viz. the statutes recited in the act, which are for regulating navigation and trade,) "so far as they do relate to the said plantations, or any of them, which are in any ways repugnant to this act, or to any other law hereafter to be made in this kingdom, so far as such law shall relate to and mention the said plantations, are illegal, null and void, to all intents and purposes whatsu-

Acts of Assembly, after being passed by the assembly and council, not only require the assent of the governor, as representative of the crown, but are also in all cases subject to disallowance or confirmation by the King in Council. All private acts, and in some instances public acts, are passed with a clause suspending their operation till the pleasure of the King be known. In that case they have of course no effect in the colony till the royal will be ascertained. But in general, public acts are passed without a suspending clause, and when in this form, they come into legal operation in the colony immediately on receiving the governor's assent, and so continue until notice is given there of their disallowance at home. (7)

As the mode of proceeding in taking the King's pleasure at home, as to the allowance or disallowance of colonial acts, is a subject that is perhaps imperfectly understood by the public, it may be convenient to offer a full account of it in this place.

On the arrival at the colonial department in England of acts passed by the Governor, Council, and Assembly of any of His Majesty's colonies in the West Indies, the course pursued is said to be as follows:—The acts of the session are referred by the Secretary of State to the counsel for the colonial department, who is required to "report his opinion upon them in point of law." By this established form of expression is understood to be meant that the counsel is to report whether the acts respectively are such as, consistently with his commission and instructions, the governor was authorized to pass; whether, in the language of the statute,

Of the allowance or disallowance of the Acts of Assembly.

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ever." And it will be observed that the wording of the 3 & 4 W. 4, c. 59, s. 56, is at least equally unfavourable to Mr. Edwards' construction. (7) 1st Report, W. I. C. p. 6.

any part of them is repugnant to the laws of England, or to any law made in this kingdom, so far as such law may mention or refer to the plantations, and whether they are respectively so framed as to give full and entire effect to the purposes for which they may have been passed by the colonial legislature. In pursuance of this reference a report is made to the Secretary of State for the Colonies by the counsel to his department. The acts, accompanied by this report, are then transmitted to the President of the Council, with a letter from the Secretary of State for the Colonies, desiring his lordship to lay the acts and the report before the King in Council for His Majesty's consideration. At the first board of council which is held after receiving this communication, the acts are referred to the Lords of the Committee of Council for the Affairs of Trade and Plantations, who are directed to report to the King in Council their opinion as to the proceedings it may be proper to take in relation to them. It is understood that the committee of trade proceed to select from the acts thus referred to them all such as present any point of peculiar novelty or importance, or as give rise to any question of legal difficulty. The acts thus selected, together with all *private* acts, are referred by their lordships to his Majesty's Attorney and Solicitor-General for their opinion. When the report of the law officers of the crown is obtained, the Lords of the Committee of Trade enter into the consideration of all the acts of the session of the particular colony; and it is understood to be a settled rule, that in their deliberations upon this subject, they are assisted by the Secretary of State for the Colonies, in his capacity of a member of the committee. A report from the Committee of

Trade is then addressed to the King in Council, and in this report all the acts of the session of the Colonial Assembly are classed under three heads; first, if it is thought proper to *disallow* any act, the report contains a full statement of the grounds of the objection which may exist to it. Secondly, if any of the acts relate to measures of general and peculiar importance and interest, it is recommended that a special order in council should pass for the *confirmation* of them. Thirdly, the great majority of the acts of each year being usually little more than business of routine and continual recurrence, their lordships are in the habit of advising that such acts "*should be left to their operation.*" If this report is adopted by the King in Council, orders are drawn up respecting such of the acts as are comprised in the two first mentioned classes. No colonial act, unless passed with a suspending clause, can be disallowed except by a regular order of the King in Council. (7) The Clerk of the Council then addresses to the Secretary of State for the Colonies a letter, announcing to him the decision which has been adopted respecting all the acts of the session, and transmitting to him the original orders in council for confirming or disallowing any particular acts. The Secretary of State communicates the result to the governor of the colony, and at the same time conveys to him the *original orders* (8) in council. A list is also made out of the acts which have neither been confirmed nor disallowed, with an intimation that they are to be left to their operation.

From the preceding statement it appears that comparatively few of the statutes passed in the colonies re-

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(7) See post, p. 44.

(8) That is, the first separate piece of paper on which the order is

written, the really original order being only the entries made in the Council's books.

ceive either the direct confirmation or disallowance of the King. It is clearly understood that so long as this prerogative is not exercised, the act continues in force under the qualified assent which is given by the governor in the colony itself on behalf of the King. It is also received as a maxim that the King may at any time, however remote, exercise his prerogative of disallowing any colonial act which he has not once confirmed by any order in council. This, however, (says the learned writer from whom the whole of the preceding account is taken,) (9) may be numbered among those constitutional powers of the crown which have been dormant for a long series of years, and which would not be called into action except on some extreme and urgent occasion. It is believed that no instance has occurred in modern times of the disallowance of any colonial statute after the notification to the governor that it would be left to its operation.

By an order in council of the 15th January, 1806, it is declared "that in all cases when His Majesty's confirmation shall be necessary to give validity and effect to any act passed by the legislature of any of His Majesty's colonies or plantations, unless His Majesty's confirmation thereof shall be obtained within three years from the passing of such act in any of the said colonies or plantations, such act shall be considered as disallowed." This order has been sometimes supposed to lay down a rule applicable to all descriptions of colonial statutes. It is however apparent from the words of the order itself, from the reason of the case, and from the understanding of the public officers in England, that such is not the sound construction or

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(9) Mr. Commissioner Dwaris, 1 Report, p. 829.



real effect of the order. It was made to remove a difficulty which had arisen respecting one particular class of colonial statutes, those namely which contained a clause suspending their operation till the pleasure of the King was known. This is the only description of statutes respecting which it can be said that His Majesty's confirmation is "necessary to give them validity and effect." Without the assistance of such a general rule, it would have been impossible to know in any particular case whether the statute would or would not at some future time be called into operation, an uncertainty peculiarly embarrassing in reference to private acts, which invariably contain a suspending clause. (1)

The acts when passed are deposited in the Colonial Secretary's Office; (2) and official copies of such of them as have been sent home are also kept in this country; those prior to 1782 in the office of the Board of Trade, those of subsequent date in the Colonial Office. In 1782 the business of reviewing the acts of the colonial legislatures previously to their allowance by the King in Council, was transferred from the Board of Trade and Plantations to the office of the Secretary of State for the Home Department, and afterwards to the Secretary of State for the Colonies, in whose office are now to be found all certified copies of acts, and other official documents since that period. (3)

Though, from the preceding account of the colonial

Power and  
prerogative of  
the crown.

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(1) The whole of the preceding matter relative to the disallowance or confirmation of colonial acts is copied from the valuable report of Mr. Commissioner Dwaris on the Administration of Civil and Criminal Justice in the West Indies, printed

by order of the House of Commons of 5th July, 1825.

(2) 1st Rep. W. I. C. 123; 2d Rep. 59.

(3) Smith's Preface to the Acts of Grenada, p. xi.

legislatures, it appears that their powers are most efficient and extensive, it will be found nevertheless, upon consideration of the whole that has been premised, that the dependency of the colonies on, and their allegiance to, the crown of Great Britain, and also their proper subordination to the British Parliament, are secured by strong and proper demarcations; for among various other prerogatives, the King reserves to himself not only the nomination of the several governors, the members of the council, and most of the public officers of all descriptions, but he possesses also at the same time, as we have seen, the right of disallowing and rejecting all laws and statutes of the colonial assemblies even after they have received the assent and approbation of his own deputy in the colony. Hence the affirmative voice of the people in their representatives is opposed by three negatives, the first in the Council, the second in the Governor, and the third in the Crown, the last of which possesses likewise the power of punishing the two former branches by dismissal, if they presume to act in opposition to the royal pleasure; nor is the regal authority less efficient over the executive power within the colonies than over the legislative. The Governor is commonly Chancellor by his office, but whether assisted by his council, as in Barbadoes and some few other places, or presiding solely in this high department, an appeal (as already stated) lies to the King in Council, in the nature of a writ of error, from every decree that he makes; and the like liberty of appeal is allowed from his judgment, when sitting with the council upon writs of error, from the common law courts. (4) The reason assigned in the

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(4) The governor is usually prevented by his instructions from allowing an appeal where the sum in dispute is under a certain value;

books far allowing such appeals is this, that without them the rules and practice of law in the colonies might by degrees insensibly deviate from those of the mother country, to the diminution of her superiority. (5) Again, the King, as supreme head of the empire, has the sole prerogative of making peace and war, treaties, leagues, and alliances with foreign states; and the colonists are as fully bound by, and subject to, the consequences thereof, as the inhabitants within the realm. (6) He has also the prerogative of regulating all the colonial military establishments both by sea and land, quartering troops in such towns and places in the plantations as he may deem best, augmenting them at pleasure, and retaining them in the colonies at all times and seasons, as well in peace as in war, not only without but against the consent of the Assemblies. (7)

But, on the other hand, there are the same *limits* to Taxes. the royal prerogative in the colonies as in the mother country, (8) the King having no right to impose taxes, or levy aids of any description in a settlement having a

but "it is in His Majesty's power, upon petition, to allow an appeal in cases of any value." 2 Chal. Opin. 177. This right is expressly reserved to the crown, not only by many of the charters of justice, but also by the Privy Council Bill, 3 & 4 W. 4, c. 41.

(5) Vaughan, 402; Show. Par. Cas. 33,

(6) B. Edwards, vol. 2, p. 359.

(7) The same writer says that these latter rights must be admitted with some limitation, p. 354, but does not explicitly state the nature of that limitation, nor does he ad-

vance any sufficient reason for denying its full operation to that branch of the prerogative.

(8) The prerogative in the West Indies, unless where it is abridged by grants, &c., made to the inhabitants of the respective provinces, is that power over the subjects, considered either separately or collectively, by their representatives, which, by the common law of the land, abstracted from all acts of parliament and grants of liberties, &c., from the crown to the subjects, the King could rightfully exercise in England. 1 Chal. Op. 232, 233.

legislative assembly of its own, (9) nor, as it is conceived, in any other colony; but he may request pecuniary supplies from a colonial House of Representatives, by whose free grant alone they can be lawfully obtained. (1)

And, in point of fact, the expenses of the internal administration, (comprising charges for the service and defence of the colony, for salaries of public officers, for repair of roads and buildings, for the maintenance of the clergy, and the relief of the poor,) is in general defrayed by grants of the House of Assembly, who *frame bills for this purpose*, at the suggestion of the governor, at such time and to such extent as the public exigencies may require. (2)

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(9) *Campbell v. Hall*, Cowp. 204.

(1) Even before the separation of the American states, though the extent of the Parliament's authority was not settled, this limitation of the *royal* prerogative was well understood. Franklin, in a letter to a friend, dated 12th March, 1778, states the ancient established regular method of drawing aids from the colonies to be thus:—"The occasion was always first considered by their sovereign in his privy council, by whose advice he directed his Secretary of State to write circular letters to the several governors, who were directed to lay them before their Assemblies. In those letters the occasion was explained, for their satisfaction, with gracious expressions of His Majesty's confidence in their known duty and affection, on which he relied that they would grant such sums as should be suitable to their abilities, loyalty, and zeal for his service." Franklin's Memoirs, p. 321. In his celebrated examination before the committee of the House of Commons in 1766, he makes a similar statement, but adds, that in form the requisition had usually not been to grant *money*, but to raise, clothe, and pay troops.

(2) Franklin, in his examination, says that such a case could not be supposed as that an Assembly would not raise the necessary supplies to support its own government. "An Assembly that would refuse it must want common sense, which cannot be supposed."

Mr. Brougham states, in his *Colonial Policy*, (published in 1803,) "that the expense of the *Jamaica* civil establishment is altogether defrayed by colonial taxes; that the contingent charges amounted in 1781 to 22,142*l.* currency, and that 8000*l.* currency is also settled yearly upon the crown by the Revenue Act, 1728, out of which the governor receives 2500*l.*"

With respect to Barbadoes and

The Leeward Charibbee Islands, the Virgin Islands, (1 Feb. 1774,) and the Island of Barbadoes, (12 Sept. 1663,) are also expressly made subject by acts of their own Assemblies to a duty of four and a half per cent., in specie, on their exported produce, granted originally by most of them in consideration of different acts of royal favour and indulgence.

The grant was made by Barbadoes (though not till after a strong resistance) in order to put an end to the proprietary government and the claims under it, and at the same time to settle the right of the then holders to their possessions, (B. Edw. vol. 1,) and by the Virgin Islands as the price at which a representative Assembly was to be granted them. In their petition to the King they promise that if such an assembly was conceded, they would grant an impost of four and a half per cent., "similar to that which was paid in the other Leeward Islands." The King granted the prayer of the petition expressly on the above condition. The proclamation for calling the Assembly together was dated 30th November, 1773, and it met on the 1st February, 1774. Its very first act was the establishment of the promised duty, (B. Edw. vol. 1, p. 460-1). The attempt to obtain a similar grant from the Assembly of Jamaica had long before utterly failed. That island possessed an Assembly, and there was no other boon for which it

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the Leeward Charibbee Islands, he states that part of their civil expenses is paid out of the four and a half per cent. fund levied upon them to the use of the crown, and that the rest is defrayed by direct taxes in these islands; that the inhabitants of *Grenada*, *St. Vincent*, and *Dominica* also contribute in a large proportion to the public expenditure;

but that the expense of the civil establishment of the *Bahamas* and the *Bermudas* is chiefly borne by Great Britain.

In this work will be found much valuable information on the subject of colonial finance, of a kind too minute for the purposes of the present sketch. See *Colonial Policy*, vol. 1. pp. 548—560.

was willing to pay so large a price. The matter was the subject of a bitter contest between the Crown and its representatives on one part, and the House of Assembly and people of Jamaica on the other. It is well described by Bryan Edwards, who thus records (vol. 1, p. 175,) the sort of compromise that terminated it:—

“ In the year 1728 the Assembly consented to settle on the Crown a standing irrevocable revenue of 8000*l.* per annum on certain conditions, to which the Crown agreed, and of which the following are the principal, 1st, that the quit rents arising within the island (then estimated at 1460*l.* per annum) should constitute a part of this revenue; 2dly, that the body of their laws should receive the royal assent; and 3dly, that all such laws and statutes of England as had been at any time esteemed, introduced, used, accepted, or received as law in the island, should be and continue to be the laws of Jamaica for ever. The Revenue Act, with this important declaration therein, was accordingly passed; and its confirmation by the King put an end to a contest no less disgraceful to the court at home, than injurious to the people within the island.”

The produce of this duty (which forms what is called the four and a half per cent. fund) is payable into his Majesty's exchequer; (3) but out of it certain sums are allowed by His Majesty's government towards

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(3) But it is said that the payment *in specie* is no longer required. Colonial Policy, vol. 1, p. 552. It is believed that the four and a half per cent. duty is, and for many years has been, paid in each colony by the delivery of four and a half pounds of sugar, or other produce out of every 100 pounds to the officer of the customs there, who

receives the same on behalf of the Crown, and ships it for England, where it is disposed of by an authorised agent, and the amount received paid into the Exchequer. In some of the colonies the planters would not have been able to pay the value in ready money; and had they themselves shipped the produce to this country, they would necessarily

the salaries of the governors of these and other colonies, exclusive of what is granted to those officers directly by the Colonial Assemblies. (4)

have incurred the additional charges of freight and insurance, which would probably have made the duty on them equal to a tax of double or treble its nominal amount.

Bryan Edwards says, (vol. 1, p. 414,) that after the year 1735 a new mode of collecting the four and a half per cent. duties was adopted, which made them more profitable to the Crown, but he does not particularize either the new or the old mode. With a view to show how the colonies liable to the payment of these duties are burdened by them, he adds, that they are "considered by the planters as a net tax of 10 per cent. on the produce of their estates for ever." This opinion is distinctly confirmed by that of the author of the "Colonial Policy," who thus strongly expresses himself as to the objectionable and oppressive nature and effects of this tax. "It is beyond comparison the most injurious to the subject in proportion to the benefit it produces to government of any that I remember to have seen recorded in the history of taxation. It both takes more and keeps more out of the pockets of the people, in proportion to what it brings into the treasury, than any other imposition with which I am acquainted. Accordingly all these islands have gradually declined, instead of advancing in improvement, like the rest, and this notwithstanding many natural advantages which they possess." Col. Policy, vol. 1, p. 554.

The same high authority after

wards observes, that "The ceded islands were never subject to the four and a half per cent. duty. An attempt was made by government to extend these burthens to them immediately after the peace of Paris, (1763,) but the question was fully discussed before the Court of King's Bench in the case of Grenada. The colony prevailed, and the same judgment was held to free the other settlements, Dominica, St. Vincent, and Tobago." *Ib.* 555.

The case of Grenada was this:—The crown had by letters patent, dated on the 9th April, 1764, appointed General Melville governor of Grenada, with power to summon a General Assembly to ordain laws for the government of the colony. On the 20th of July in the same year letters patent were issued directing the imposition of the four and a half per cent. duties on that island. Mr. Campbell resisted the payment of these duties, and the Court of King's Bench held that the latter instrument was a violation of the first, and was therefore void. *Campbell v. Hall*, Cowp. 204.

(4) Edwards, vol. 1, p. 464, *ct seq.* Certain pensions and grants wholly unconnected with the colonies, are also charged on this fund; but it has been publicly stated in the House of Commons that no further pensions are to be charged upon it, and the fund is now carried to the public account, and made part of the consolidated fund, 1 Wm. 4, c. 25, s. 2.

With respect to the *Courts of Justice*, though their establishment is usually directed in general terms by the King's commission and instructions to the governor, their denomination, quality, number and particular constitution, are, for the most part, left to be settled by the legislature of the colony. The Court of Chancery, in which the governor generally sits as sole judge, and exercises powers similar to those possessed by the Lord Chancellor of England, is the exception to this practice. This is created by virtue of the royal prerogative. (5)

In most of the colonies these courts principally consist of a *Court of Chancery*,—a Court uniting the jurisdictions of the *King's Bench and Common Pleas* in England, a *Court of Appeal and Error*, a *Court of Ordinary*, a *Court of Admiralty* or *Vice-Admiralty*, a Court for the administration of *Criminal Justice*, (frequently called a Court of Grand Session,) and in colonies where slavery exists, a *Slave Court*, (see post, p. 62,) or court for trial of capital offences committed by slaves. There are also in most of the colonies *justices of the peace*, with jurisdictions similar to those of English magistrates.

The law administered in these several courts (as inferrible from the general principles laid down in a former part of the chapter) is such as the royal commissions, conferring a constitution, the acts of Assembly, or acts of the British Parliament extending to the colony, may have established. And the commissions have usually directed that the statutes to be made by the colonial legislatures thereby sanctioned, and the laws to be administered by the courts of justice thereby authorized, shall be as nearly as possible agreeable to

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(5) 1 Chal. Op. 183.



the laws of England. (6) But Lower Canada is an exception. (7) In some islands it has been declared by act of Assembly, that the common law of England, except so far as altered by their own statutes, is in force there. (8) It may be laid down therefore, as a general

(6) See commission establishing the constitution of the Grenada or Southern Charibbee Island government, 1763. Lord Carlisle's patent as to Barbadoes, 1 chap. I, 1625, and the charters of justice for the colonies in general.

(7) For though that colony has received the criminal laws of England, yet the ancient code of France is established there in all civil cases. Soon after the cession of the province of Quebec in 1763, the law of England, both civil and criminal, was administered in the provincial courts, not in pursuance of any regular authority, but because the English settlers had influence enough with the local government to procure the temporary establishment of English courts of justice; but the first Quebec Act, 14 Geo. 3, c. 83, was passed at a time when the discord prevailing in the neighbouring provinces rendered it peculiarly necessary to conciliate the French inhabitants of Lower Canada. With this view the 8th section recognizes the old Canadian law as the rule of judgment in all civil matters, though by the 11th section the criminal law of England was retained.

Upon the division of the province of Quebec into the two provinces of Upper and Lower Canada by the Canada Bill of 1791, (31 G. 3, c. 31,) the Legislative Assembly of the Upper Province immediately established the English courts in this latter colony, and introduced

the law of England in all cases civil and criminal. By a portion of the 31 Geo. 3, c. 31, the holding of lands in Lower Canada was regulated. The 6 Geo. 4, c. 59, was passed to explain that act, and both are recited and their powers extended by the 1 Wm. 4, c. 20, which empowers the King to assent to laws relating to the descent, &c., of lands in Lower Canada, though such laws may be repugnant to the laws of England.

(8) By act of the Leeward Charibbee Islands, of 1705, No. 31, (Howard's Laws, 386,) sec. 2, it is "declared that the Common Law of England, as far as it stands unaltered by any written laws of these islands, or some of them, confirmed by your Majesty, &c., or by some act or acts of Parliament extending to these islands, is in force in each of these your Majesty's Leeward Charaibee Islands, and is the certain rule whereby the rights and properties of your Majesty's good subjects inhabiting these islands are and ought to be determined, and that all customs or pretended customs or usages contradictory thereto are illegal, null and void." A similar declaration was inserted by the Jamaica Assembly in the revenue law of 1728, as one of the conditions on which they granted to the Crown the revenue of 8000*l.* a year.

And the royal commissions establishing the constitutions of the

proposition, that in all cases not otherwise provided for, the law of England is the law of that class of the colonies now under consideration. And in this is to be understood the statute as well as the common law of England; but only so much of the statute law as existed when the colony first received its constitution under the royal commission, and as is in its nature now applicable to the new colonial establishments; (9) for British statutes passed *since* the establishment of such constitution do not (as we have seen) apply, unless expressly or by necessary inference extending to the colonies, nor those passed *prior* to its establishment, if not suited to the state of society in the new settlement. (1)

Such appears to be in general the state of law on this subject; (2) but where the royal commission has not established the English law, and where it has not been imposed by any act of Assembly or of the British Parliament, it is conceived that upon the general principles formerly stated, (ante, p. 3,) that law can have no force in a conquered or ceded colony, subject, how-

different colonies frequently direct that the statutes made by the legislatures thereby granted shall not be repugnant to the laws of England, and that the courts of justice thereby authorized shall administer justice agreeably, as nearly as possible, to the laws of England.

(9) In the Bahamas and in Jamaica, acts of Assembly have been passed, declaring what part of the statute law shall be considered as binding in these colonies. That of the Bahamas was passed (as appears by 2d Report, W. I. C. p. 61,) in the year 1799. It contained a clause to suspend its operation till the King's pleasure should

be known, and his Majesty's assent was soon after signified.

(1) Such at least is the limitation in colonies acquired by occupancy; and it applies no doubt equally to the cases now under consideration. See the subject of the applicability of English law to the colonies well discussed in Dr. Story's Commentaries on the American Constitution, vol. 1, p. 131—142.

(2) It is a subject which the colonial lawyers consider as imperfectly understood, but their opinions appear to coincide with the views here taken. See 1st Rep. W. I. C. 124; 2d Rep. 61.

ever, to the important exception already noticed, as to laws and statutes of the mother country, which are of universal policy, and are avowedly meant to extend to all existing and subsequently acquired possessions.

The rules of practice and pleading are usually settled in each colony by some act of Assembly, or by the regulations of the courts themselves. (3) They differ every where, in various points, from those of the English courts, though framed in a great measure upon that model. There are no records on parchment, but copies of the proceedings are made out upon paper, and kept by the proper officer.

The prosecution and defence of suits is in most colonies conducted by *barristers* and *attornies*, as in England. In the West Indies these characters are often united in the same persons; but they are also often separated. In some colonies it is required, as a qualification for a practising counsel, that he should have been called to the bar in England. In others it is sufficient that he should be admitted or sworn in as a barrister in the courts of the colony. *Attornies* and *solicitors* in the West Indies, not qualified as counsel, are in some colonies required to produce a certificate of having served a clerkship for five years either in England or the West Indies; in others such certificate is not required. (4) In almost all the colonies there is an *Attorney-General*, and in many of them a *Solicitor-General*, who are appointed from home by warrant

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(3) The right of each court to lay down the rules by which its proceedings were to be governed was distinctly asserted in the judgment delivered by Mr. Baron Bayley on behalf of the rest of the judges in the case of *Mellish v. Richardson*, decided in the House of Lords, 1 Clark and Finnelly's

Reports, 224. That case related only to the superior courts of this country, but the principle was stated in the most general terms.

(4) 1st Rep. W. I. C. p. 121; 2d Rep. 154—157, where more minute information on this subject will be found.

under the signet and sign manual, and whose duties are similar to those of the same officers in England, but whose actual services are in some respects more extensive, as the whole business of instituting and conducting criminal prosecutions against free persons is often exclusively vested in these public functionaries. (5)

In the Court of *Chancery* the governor is president, assisted, in some settlements, by the members of council, in which latter case the decision is by majority of votes. The judges of this court are supposed to have all the authority of the Lord Chancellor of England in the English Court of Chancery, except in cases wholly inapplicable to the colony. Under this general jurisdiction they sometimes also deal with cases of *lunacy*, though that would seem, upon principle, rather to belong to the governor alone, as the general depository of the King's prerogative. There is no system of bankrupt law; but the principle of *cessio bonorum* is acknowledged in the establishment of jurisdictions in some colonies for the relief of insolvent debtors; and this remedy extends to persons who are not traders. Orders and decrees of the Court of Chancery are enforced, as in England, by process of contempt and sequestration; but it has also *a process on a decree for payment of money*, which is in the nature of an execution, and operates on the goods and lands. (6) The appeal is to the King in Council, subject to certain regulations, which there will be occasion to notice more particularly when treating of the general subject of appeals.

The Court of *King's Bench and Common Pleas* generally combines the jurisdictions of the two courts

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(5) 1 Rep. W. I. C. 198; Ib. 2 series, 229; 3 Rep. 2 series, p. 6—118.

(6) 1st Rep. W. I. C. p. 24.

which are held under those denominations in England; but instead of the practice of fines and recoveries, certain other modes of proceeding, with similar objects in view, have been devised by the different colonial legislatures. The puisne judges of this court are usually appointed by the governor, with the advice and consent of the Council, and commissions are made out to them under the seal of the colony. They are selected from such persons resident in the colony as appear to be eligible from their characters and circumstances, but have seldom been educated for the legal profession. They hold their offices at the pleasure of the Crown; and the salary of the chief justice (for the puisne judges in general act gratuitously) is paid, when there is a colonial legislature, by grant of the House of Assembly: in other cases it is provided for by the votes of the House of Commons.

The *trial by jury* is in force in most of those colonies now under consideration; but special juries not being easily adapted to the circumstances of a small society, are in use in very few instances. (7) The commissioners, however, in recommending that lawyers should alone be placed on the judgment seat, have advised, in many instances, that the class of gentlemen out of which the assistant judges are now selected should be employed to furnish special juries in their respective colonies. The proof of debts in this court, whether by specialty or simple contract, when the creditor resides and the debt occurs in England, is made in a manner peculiar to the colonies, under the regulations of the statute 5 Geo. 2, c. 7. By this act it is provided that in such cases it shall be lawful for the plaintiff and defendant, and also to and for any witness, to verify

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(7) They are in use in Tobago. Special juries are known in practice there, and are struck in the same manner as in England. 1 Rep. 81.

and prove any matter or thing before the chief magistrate of the city, &c., in or near which he resides, by affidavit or writing upon oath, or if a Quaker, by affirmation; and every affidavit or affirmation certified under the city seal, in manner thereby directed, and transmitted to the colony, shall be of the same force and effect there, as if sworn *vivâ voce* in open court. (8) No notice is required by the act to be given to the opposite party on the occasion of making such affidavit before the magistrate, but the proceeding is entirely *ex parte*; and on production in the colonial court of the affidavit so sworn, it is allowed in proof of the debt, though such evidence may of course be encountered by *vivâ voce* testimony on the opposite side. In the West Indies judgments bind the real estate, and, according to the practice in most islands, they are not registered or docketed. They are, however, entered in the Prothonotary's Office. (9) Writs of execution in the West Indies are executed by the Provost-Marshal, who is the general executive officer of all the courts of law, and also performs the duties of Serjeant-at-Arms in the Court of Chancery. They run against goods, lands, and body, all at once; but the levy on each is to be made not simultaneously, but in succession, and in the following order,—produce, negroes, land, body. (1) Under these writs, equities of redemption, and all other equitable as well as legal interests, may be taken. Chattels are, and slaves were, taken in execution, put up to sale, and sold to the highest bidder. Lands and houses are appraised by a jury summoned for the purpose, and if not redeemed by the defendant within a

(8) The commissioners remark that notwithstanding the clear terms of this law, the court at Barbadoes allows it to be a valid objection to such an affidavit, that it has been

made either by plaintiff or defendant. 1 Rep. W. I. C. 37.

(9) 1st Rep. W. I. C. p. 38.

(1) 1st Rep. W. I. C. 39.

certain period, are delivered and conveyed at that price to the plaintiff. Executions are often taken out without being levied, but are kept as securities, to be enforced by the different creditors in succession. They are used as securities, and are assignable; but the assignee must proceed in the name of the assignor. (2) The real estate being bound from the issuing of the judgment such executions have, as to land, all the effect of successive mortgages; but the creditor whose writ is executed first, gets a priority as to personal estate.

Of the Court of *Ordinary*, the governor is sole judge. The probate of wills, granting letters of administration, and marriage licenses, form the subject-matters of his jurisdiction. All wills are proved, but the probate is conclusive only as to personalty. The solemnities requisite to the validity of a will are nearly the same as in England. Marriages are either by banns or by license from the governor, in his capacity of Ordinary. They have no canonical hours in the colonies, and marry at what time they please. A direct and immediate appeal lies from this court, but it is doubted in some colonies whether that appeal is to the King in Council, or to His Majesty as head of the church (3). In Jamaica, the Attorney-General of the colony, and the Secretary there, in answer to the commissioners, stated that the appeal lay directly from the Court of Ordinary to the King in Council. (4)

The Court of *Admiralty* or *Vice-Admiralty* has two branches, a Prize and an Instance Court, both held by commission issuing from the High Court (5) of Admi-

(2) 1 Rep. W. I. C. 81.

(3) 1 Rep. W. I. C. p. 43; but see also pp. 104, 193.

(4) 1 Rep. 2d series, 233; ib. 269.

(5) 1 Rep. W. I. C. 43. Colo-

nial Courts of Admiralty have not, however, been uniformly held by authority derived from the Admiralty of England alone, for upon a question regarding an appeal from the Admiralty Court of Nevis, Mr.

rality in England, and before a judge whom that commission appoints. Both possess the same jurisdiction as is exercised by the correspondent courts in England, as nearly as circumstances will permit. The Prize Court is of course held only in time of war. The cases in the Instance Court consist of seizures by the Custom House, disputes relative to seamen's wages, bottomry bonds, &c. The statute 3 & 4 Wm. 4, c. 59, s. 64, the act under which the trade of the colonies is now regulated, enacts "that all penalties and forfeitures which may have been heretofore or may be hereafter incurred *under this or any other act relating to the customs or to trade or navigation*, (6) shall and may be prosecuted, sued for and recovered in any court of record or of Vice-Admiralty, having jurisdiction in the colony or plantation where the cause of prosecution arises, and in cases where there shall happen to be no such courts, then in any court of record or of Vice-Admiralty, having jurisdiction in some British colony or plantation near to that where the cause of prosecution arises: provided that in case where a seizure is made in any other colony than that where the forfeiture arises, such seizure may be prosecuted in any court of record or of Vice-Admiralty having jurisdiction either

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Attorney-General Northey said, "If that court was held under the late King's commission for governing the Leeward Islands, as the petitioner takes it to be, alleging that the president and council had power only to appoint, but not to sit themselves as a Court of Admiralty, or if the sentence was given by the president and council of Nevis, as the council there, in both cases the appeal ought to be to Her Majesty in Council; but if the president and council held a Court of Admiralty

by authority derived from the Admiralty of England, the appeal is to be to the Court of Admiralty in England, and so it was lately determined by Her Majesty in Council." 2 Chal. Op. 227.

As to the manner in which appeals from the decisions of Vice-Admiralty Courts are now regulated, see post, Appeals.

(6) The words in italics were not in the 6 G. 4, c. 114, s. 57, of which this clause is in other respects an exact copy.



in the colony or plantation where the forfeiture arises, or in the colony or plantation where the seizure is made, at the election of the seizer or prosecutor: and in cases where there shall happen to be no such courts in either of the last-mentioned colonies or plantations, then in the court of record or of Vice-Admiralty having jurisdiction in some British colony or plantation near to that where the forfeiture accrues, or to that where the seizure is made, at the election of the seizer or prosecutor."

The Court of Vice-Admiralty has also jurisdiction in certain cases under the Slave Abolition and Registry Acts. This court is held as occasion requires. Its officers are the King's Advocate, the King's Proctor, the Registrar, and the Marshal. Appeals were formerly made from the Instance side to the High Court of Admiralty in England. From the Prize side they were made to the King in Council, subject to the regulations of the prize act, but now appeals of any sort from the Vice-Admiralty Court must be made to the King in Council. (7)

Besides the civil jurisdiction, there are Admiralty Sessions, held by a separate commission, for the trial of murder, piracy, and other offences committed on the high-seas. (8) This court is composed of the judge of the Admiralty, (who presides,) the members of council, and all flag-officers and captains on the station.

We must now proceed to the *Criminal Court*, which has jurisdiction over all crimes committed by free persons. The president is usually one of the judges of the King's Bench and Common Pleas. The course of proceeding is by indictment, found by a grand and

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(7) See post, "Appeals."

(8) 1 Rep. W. I. C. 43, 83.

tried by a petit jury, as in England. (9) After sentence, the governor has a power of reprieve and pardon in ordinary cases; but in treason and murder the crown alone can pardon; and all that can be done by the governor is to suspend the execution, and send home a report of the case for His Majesty's determination.

The *Slave Court* was formerly held for trial of capital offences committed by slaves. It was in different colonies differently constituted. In most of the West India islands judges consisted of justices of the peace, who assembled not at any sessions or fixed time of meeting, but at times and places appointed *pro re nata* in each particular case, and the trial commonly took place as soon after the charge was made as their own convenience and that of the witnesses permitted. In most islands two or more justices were required in order to form a court. In the Slave Courts, it is said by an able writer, (1) to be a general principle that the slave is considered as subject to the criminal code of England when it is in force with free persons. The commissioners, however, reported exactly the reverse with regard to Barbadoes. (2) All the authorities agree that he was answerable for offences created by the slave laws of the particular colony. (3) In none of these courts was any such pro-

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(9) As to the person by whom the indictment must be presented to the grand jury, see ante, p. 55. In many of the colonies the grand jury examine witnesses for the defence as well as for the prosecution. The commissioners, however, considered this practice an evil, and recommended its abolition. See Reports of the West India Commissioners.

(1) Stephens's Delineation.

(2) 1 Rep. W. I. C. 49.

(3) The above question may now be considered settled by the very general terms employed in the 17th section of the Slavery Abolition Act, 3 & 4 W. 4, c. 73, which declare that "no act nor order in council shall authorise any person but a special justice of the peace to inflict

ceeding known as a bill of indictment, or any preliminary examination of the charge by a grand jury, or by a superior court. In some islands under late meliorating acts, freeholders, or white inhabitants, to the number of six, seven, or nine, were, in capital cases, summoned and sworn as a jury to try the question of guilty or not guilty, the law being left to the justices alone. But this regulation was not the usual one; for in some colonies the justices were required to associate with themselves on the trial of capital charges three or more freeholders or housekeepers, who jointly with them decided questions of law as well as of fact,

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whipping, or any other corporal punishment, on any apprenticed labourer: provided that this act shall not exempt any apprenticed labourer from such corporal punishment as by any law or police regulation is now in force for the punishment of any offence, *it being equally applicable to all other persons of free condition.*" The Slave Court too would seem to be abolished by the same act. That court was formerly composed of two justices of the peace and three freeholders, who were judges both of the law and the fact. But as none but special justices can now inflict any corporal punishment on apprenticed labourers, nor even they unless such punishment be "equally applicable to all other persons of free condition;" and as the negro, from the condition of a slave has been elevated into that of a free apprenticed labourer, and is classed with "*other persons of free condition,*" the men on whom the power of the court was to operate no longer exist, and the very founda-

tion of its jurisdiction is gone. It may be supposed that by the force of the proviso in the 19th section, to the effect that "nothing therein contained shall be construed to abrogate the powers vested in the supreme courts of record, or the superior courts of civil and criminal jurisdiction in any of the colonies," the Slave Court is still competent to judge of offences committed by slaves. But, in the first place, the Slave Court never was a court of record. (1 Rep. W. I. C. p. 48.) In the next, it may be doubtful whether it can properly be considered one of the "Superior Courts of Civil and Criminal Justice," (certainly not, if the phrase is to be construed in the conjunctive sense); and lastly, if it does really come within that description, then the proviso in the 19th section will be opposed not only to the general spirit of the act, but to the positive enactment of the 17th section, and must therefore be considered to be overruled.

and had an equal authority with them in adjusting the punishment, when of a discretionary kind, a majority of votes being sufficient for either purpose.

The proceedings were in general wholly by *parol*, except that the warrant or mandate for execution (it is believed) was generally in writing, and that an arrest-warrant was issued to take the slave into custody to answer the charge. In *Dominica*, however, it was directed by law that the proceedings at the trial should be recorded by the clerk of the crown, who was required to attend the court for that purpose; and there was a similar law in the *Bahamas* and *Jamaica*, with the addition that the charge should, previous to the trial, be reduced into writing and read; but it was provided that the same should not be questioned for any defect of form. These provisions, however, did not extend to any but felonious offences; nor to any felonies but such as were punished with death or transportation.

From the decisions of these courts it is said there was no appeal, and without the intervention of the governor or any other authority, they might award execution; which was awarded in general immediately after sentence, and carried into effect by the marshal or his officers. (4)

Where complaint was made of offences, not capital, committed by slaves, (5) a still more summary form of

(4) Stephens's *Delineation*, p. 402. The slave, when convicted, is at once hanged upon the nearest tree. (1 Rep. W. I. C. 54.) In some colonies there is no appeal against a sentence on conviction, in others there is. (1 Rep. W. I. C. 218.) In *Grenada* it is the practice, at the governor's request, for the justice to lay the trials before the governor previous to the sentence being ex-

cuted; but there is no legal obligation on them to do so. (1 Rep. 106.) The commissioners, however, doubt the statement thus made to them, as they consider it irreconcilable with the governor's power to reprieve, or the King's to pardon. (Id. ib.)

(5) That was, of course, committed by them against persons not standing in the relation of master;

proceeding took place. A single magistrate summoned the owner to produce the slave—heard the evidence, and either dismissed the complaint, or ordered a punishment by whipping, according to the nature of the offence.

As a security against any illegal additions to the number of slaves by secret violations of the acts for the abolition of the slave trade, systems of registration were, under the authority or by the influence of his Majesty's government, adopted in the different slave colonies. As a necessary result of the Slavery Abolition Bill, the registry of slaves, as such, must cease; but as the question of freeman or apprenticed labourer will now take the place of that of freeman or slave, there will probably be some similar mode adopted to ascertain the number of apprenticed labourers, with a view to prevent the illegal increase of that number by any person entitled to their services. It has been thought advisable, therefore, to give a sketch of the mode of slave registration.

On the 28th March, 1812, an order in council was passed for the establishment in the Island of *Trinidad* of a general registry of slaves. The details of this measure are very voluminous. Nothing beyond the general outline need be stated in this place. Within one year from the promulgation of the order, every proprietor in the island was required to make on the same day, to a public office created for the purpose, a full return of the number of his slaves, in which the names, ages, and stature of each were to be specified. These were denominated the original returns, and the

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for with respect to those in which he naturally preferred the domestic the master was personally concerned, forum.

record of them, the original registry. An exact compliance with these regulations would, it is evident, furnish a perfect enumeration and description of all the persons within the colony, who at the time at which it might be made were in a servile condition. Deaths and births, enfranchisements and importations from other British Settlements, would, however, continually be changing the numbers of this class of society, and the original registry would consequently become erroneous. Annual returns, therefore, were directed to be made by all the proprietors, specifying upon oath, with similar minuteness of description, every slave who had been added to their stock since the latest return, and certifying in what manner every diminution of their numbers had taken place. This registry formed the sole evidence in all judicial proceedings upon the question of the servile condition of persons resident in Trinidad, or of the right of property in a slave. On every question of slave and free, the production of an extract from the registry, certified under the hand of the proper officer, was made essential to the proof of the master's title. The absence of such an entry was declared to be conclusive evidence of the freedom of the asserted slave. There were also provisions for remedying involuntary errors in the return, and for protecting the rights of infants, lunatics, and married women, and of persons claiming a future or reversionary interest in a slave, it being obviously equitable that they should not suffer for any neglect in completing the registry, when they were unable to prevent it. Of all returns, whether original or annual, exact duplicates were directed by the order to be transmitted to the Colonial Office in England; but the present place of deposit is an office

(established in this country by act of parliament (6) passed since the date of the order) for receiving and registering such returns from all the colonies. It was also provided that no colonial registrar should himself be allowed to possess any slave ; that no suit instituted under that order, by any person claiming his liberty, against a pretended owner, was to be barred on the ground of the alleged servile condition of the plaintiff or prosecutor ; and that the evidence of indifferent persons, being or alleged to be slaves, should be admitted in all actions or prosecutions commenced under the order,—subject, however, to all just exceptions to their credit.

Such is the general substance or outline of the Trinidad order. By subsequent orders of the King in Council, a similar system, with frequent differences in detail, was extended to Saint Lucia and the Mauritius. And in consequence of earnest recommendations from the crown, the other slave colonies have each been induced to establish, by local acts or ordinances, some plan of registration professing in general to be modelled upon that of Trinidad, but falling, in many cases, much below that model, and rendered nearly useless by the imperfection and inadequacy of the provisions.

By the recent Slavery Abolition Act the task of pro-

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(6) 59 Geo. 3, c. 120, passed 12th July, 1819. By this act it is provided that a registrar shall be appointed to receive returns of slaves to be transmitted from any of His Majesty's British and foreign plantations, and that after the 1st January 1820, every sale or conveyance, &c. of any slaves to be executed within the United Kingdom, to or in trust for any of His

Majesty's subjects, shall be void, unless the slaves are registered and the registered names set forth in the deed or instrument ; and that no slave shall be deemed duly registered unless a return of such slave has been duly received from the colony where such slave resides, within four years next preceding the conveyance.

viding for the details by which that act is to be carried into full effect is left to the different legislative assemblies of the colonies themselves. All the West Indian colonies, with the exception of British Guiana, Trinidad, and St. Lucia, have legislative assemblies. British Guiana has a sort of local assembly (subject, however, to the power of the King in Council) called the Court of Policy, (see ante, p. 26.) Trinidad and St. Lucia are strictly speaking, therefore, the only colonies now existing in the West Indies without the form of self-government. They will probably receive directions as to the mode of carrying the Slavery Abolition Act into effect by order in council.

III. We now proceed to the third head of our inquiries, and have to consider certain acts of the British Parliament imposing regulations on the colonies in general.

The authority of Parliament over the colonies has been exercised chiefly in the establishment of certain commercial regulations that were designed to secure to the mother country (in imitation of the practice of other states) the full and exclusive benefit of her colonial possessions. Of these, the well known law passed in the 12th year of Cha. 2, c. 18, commonly called by way of eminence the *Navigation Act*, was the foundation. The restrictions of that act were extended and increased by many subsequent statutes, forming altogether a general system of navigation law, which, as far as it regarded the colonies, was said to embrace two distinct objects;—first, the augmentation of our naval strength by an entire exclusion of foreign shipping from our plantation trade;—secondly, the securing to Great Britain all the emoluments arising from her colonies, by a double monopoly, viz. a monopoly of their whole *import*, which was to be altogether *from* Great Britain,

Acts of the British Parliament imposing Regulations on the Colonies.



and a monopoly of their whole *export*, which (as far as it could serve any useful purpose to the mother country) was to be no where but *to Great Britain*. (7)

But as this system was wholly abrogated, and a new code of trade and navigation established by certain acts passed in the reign of His late Majesty, it is unnecessary to enter farther into the consideration of its provisions. (8) That new code originally consisted of several acts from 6 Geo. 4. c. 105, to c. 114, both inclusive. It was extended by the addition of several acts passed to amend and explain these, and has been, in the course of the last session of Parliament (1833) completely repealed by the 3 & 4 Wm. 4. c. 50, which recites the former acts, and declares that "it has become expedient again to consolidate and further to amend the said laws." That object has been effected by the enactment of several other statutes. (9)

(7) The impolicy of this system, in regard to both these objects, is explained and strongly reprobated in the able article "Colony," in the Supplement to the Encyclopædia Britannica, attributed to the pen of Mr. Mill, and has also been the subject of severe and merited censure in the House of Commons.

(8) An accurate account is given in Mr. Reeves' well-known work on Shipping, of so much of this law as then existed.

(9) The following is a list of the statutes passed in the present year. The provisions of such of them as may be deemed important with relation to the colonies will be given in the Appendix. As each act is intended as a substitute for some particular statute repealed by the 3 & 4 Wm. 4. c. 50, the chap-

ter of the repealed statute will, for the purpose of easy reference, be inserted in a parenthesis immediately after the description of the act which supersedes it.

3 & 4 W. 4, c. 51.—An Act for the Management of the Customs. (6 G. 4, c. 106.)

3 & 4 W. 4, c. 52.—An Act for the General Regulation of the Customs. (6 G. 4, c. 107.)

3 & 4 W. 4, c. 53.—An Act for the Prevention of Smuggling. (6 G. 4, c. 108.)

3 & 4 W. 4, c. 54.—An Act for the encouragement of British Shipping and Navigation. (6 Geo. 4, c. 109.)

3 & 4 W. 4, c. 55.—An Act for the Registering of British Vessels. (6 G. 4, c. 110.)

3 & 4 W. 4, c. 56.—An Act for

It is provided that, with certain exceptions afterwards mentioned, goods, the produce of Asia, Africa, or America, shall not be imported from Europe into the United Kingdom to be used therein. (1)

That (with certain exceptions) goods, the produce of Asia, Africa, or America, shall not be imported into the United Kingdom to be used therein, in foreign ships, unless they be ships of the country of which the goods are the produce, and from which they are imported. (2)

That no goods shall be imported into the United Kingdom from the Islands of Guernsey, Jersey, Alderney, Sark, or Man, except in British ships. (3)

That no goods shall be exported from the United Kingdom to any British possession in Asia, Africa, or America, nor to the above mentioned islands, except in British ships. (4)

That no goods shall be carried from any British possession in Europe, Asia, Africa, or America, to any other of such possessions, nor from one part of any such possessions to another part of the same, except in British ships. (5)

That no goods shall be imported into any British possession in Asia, Africa, or America, in any foreign ships, unless ships of the country of which the goods

granting Duties of Customs. (6 G. 4, c. 111.)

3 & 4 W. 4, c. 57.—An Act for the Warehousing of Goods. (6 G. 4, c. 112.)

3 & 4 W. 4, c. 58.—An Act to Grant certain Bounties and Allowances of Customs. (6 G. 4, c. 113.)

3 & 4 W. 4, c. 59.—An Act to

Regulate the Trade of the British Possessions Abroad. (6 G. 4, c. 114.)

(1) 3 & 4 W. 4, c. 54, s. 3.

(2) Sec. 4. And as to what shall be considered a ship of the country, see sec. 15.

(3) Sec. 6.

(4) Sec. 7.

(5) Ss. 9 & 10.

are the produce, and from which the goods are imported. (6)

That (with certain exceptions) no ship shall be admitted to be a British ship, unless duly registered and navigated as such, viz. navigated by a master who is a British subject, and by a crew whereof three-fourths at least are British seamen; and in coasting voyages about the United Kingdom and the Islands of Jersey, &c. the whole crew must be British seamen. (7)

That vessels under fifteen tons burden, wholly owned and navigated by British subjects, though not registered, shall be admitted to navigate in the rivers and on the coasts of the United Kingdom and of the British possessions abroad to which they respectively belong;— and all boats, British-built, owned, and navigated, under thirty tons burden, and employed in fishing on the coasts of Newfoundland, Canada, Nova Scotia, or New Brunswick, shall be admitted to be British vessels, though not registered. (8)

That all ships built in the British settlements at Honduras, and owned and navigated as British ships, shall be entitled to the privileges of British registered ships in all direct trade between the United Kingdom and the British possessions in America and the said settlements. (9)

The master and seamen are not to be deemed Bri-

(6) Sec. 11. And as to what shall be considered a ship of the country, see sec. 15.

(7) Sec. 12.

(8) Sec. 13.

(9) Sec. 14. Although this "Settlement of Honduras" has been once denied in a court of law (see ante p. 2, n. 1.) to be a British Colony, it is now treated as such, though not

under that name, and in the 3 & 4 W. 4, c. 52, (Customs Regulation Act,) it is declared, s. 119, "that 'British Possession' shall be construed to mean colony, plantation, island, territory, or settlement." The authority of a governor is vested at Honduras in a "superintendent" appointed by the crown.

tish unless natural-born or naturalized, or made denizens, or having become subjects by the conquest or cession of some newly acquired country, or by having served in His Majesty's ships of war. Natives of India born within the limits of the British dominions, are not to be deemed British seamen. Every ship (except those required to be wholly navigated by British seamen) which shall be navigated by one British seaman of a British ship, or one seaman of the country of a foreign ship, for every twenty tons burden, shall be deemed duly navigated. (1)

No British ship to depart any port in the United Kingdom or in the British possessions abroad unless duly navigated. British ships trading between places in America may be navigated by British negroes, and ships trading eastward of the Cape by Lascars. (2)

The proportion of British seamen necessary for the due navigation of British ships may be altered by the royal proclamation. (3)

The importance of the act 3 & 4 W. 4, c. 59, by which the trade of the British possessions abroad is now regulated, is such that it has been deemed advisable to print the greater part of it at length, it will therefore be found in the Appendix. It may be sufficient to state here that no goods are to be imported into or exported from any of the British possessions from or to any place other than the United Kingdom, or some other of such possessions, except into or from certain free ports, of which a table is given in the act; but with a proviso that His Majesty may extend the privileges of the act to other ports not enumerated.

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(1) Sec. 16.

(3) Sec. 20.

(2) Sec. 18.

It is also provided that the privileges granted (4) by the present law of navigation to foreign ships, shall be limited to the ships of those countries which having colonial possessions shall grant the like privileges to British ships; or not having colonial possessions shall place the commerce of this country upon the footing of the most favoured nation; unless His Majesty by order in council shall deem it expedient to grant the whole or any of such privileges to a foreign country not fulfilling those conditions.

The act then gives a table of certain kinds of goods, the importation whereof into the British American colonies is either absolutely prohibited or subjected to certain restrictions.

The act contains tables of certain duties which it imposes upon goods imported into any of His Majesty's possessions in America, Newfoundland, or Canada. These (with the exception of any duties paid under any act passed prior to the 18 Geo. 3,) are to be paid over to the treasurer of the colony, to be applied to such uses as shall be directed by its local legislature, and where it has no legislature, are to be applied in such manner as directed by the commissioners of His Majesty's Treasury. (5)

Such are the main provisions of the present system of navigation law so far as regards the colonies. (6) Its general effect, it will be observed, is that, subject

(4) 3 & 4 W. 4, c. 59, s. 5. This would be more properly expressed as the privileges "not prohibited," for it is evident, by reference to the form of the regulations above cited, that those privileges all arise from not being included in prohibitions.

(5) S. 13.

(6) Our present purpose has of course

led us to consider the navigation law solely as it regards the *Colonies*. But the general system known by the name of the navigation law, involves the universal commerce of the country, and its objects are said on the highest authority to be the *fisheries*, the *coasting trade*, the *European trade*, the commerce with *Asia*,

to certain modifications and conditions, foreign ships are now permitted to import into any of the British possessions abroad, from the countries to which they belong, goods, the produce of those countries, and to export goods from such possessions, to be carried to any foreign country whatever; (7) while, on the other hand, the trade between the mother country herself and her colonies, and also all intercolonial trade between the latter, is still strictly confined to British shipping. (8)

As Parliament has rarely had any motive to make laws for the interior government of the colonies, except in cases relative to navigation or trade, the instances of acts extending to them in other cases are not extremely numerous. (9) The following are perhaps the most important:

By 7 & 8 W. 3, c. 22, sect. 12, it is provided "that all places of trust in courts of law, or which relate to the treasury of the said islands, (1) shall, from the making of this act, be in the hands of the native born subjects of England, or of the said islands."

The 6th Anne, c. 30, makes regulations "for ascertaining the rates of foreign coins in Her Majesty's

*Africa, and America*, and the intercourse with the *Colonies*. (Speech of Right Honourable William Huskisson on the Navigation Law, 12th May, 1826.) In all its branches, those which relate to the fisheries and the coasting trade excepted, the most important alterations were introduced by the new code passed in the 6 G. 4, and are adopted with further alterations in the present statutes.

(7) 3 & 4 W. 4, c. 59, s. 5.

(8) Mr. Huskisson, in his speeches of the 21st and 25th March, 1825, and 12th May, 1826, (now in print)

has given a full explanation of the policy pursued by this country in the new commercial regulations.

(9) Indeed in some cases, where they exist, they are not easy to find, because particular acts have been extended to the colonies, in some cases of mere municipal policy, by sections of which no notice is taken in the general indexes to the statutes.

(1) Meaning (as appears from the context) the islands belonging to His Majesty in Asia, Africa, or America.

plantations of America, and as to paying or receiving silver coins at a higher rate than that fixed by this statute."

The act 4 Geo. 1, c. 11, entitled An Act "for the further preventing Robbery, Burglary, and other Felonies, and for the more effectual transportation of Felons, and unlawful exporters of Wool, and for declaring the law upon some points relating to Pirates," was by the 9th section extended to "all His Majesty's dominions in America." That act was repealed by the 7 & 8 Geo. 4, c. 27, s. 1, and the acts for amending the criminal law passed since that time, in lieu of the statutes then repealed, have been confined to England.

The act 5 Geo. 2, c. 7, entitled "An Act for the more easy recovery of Debts in His Majesty's Plantations and Colonies in America," (and commonly called Beckford's Act,) provides that "in any action or suit in any court of law or equity in any of the said plantations, relating to any debt or account wherein any person residing in Great Britain shall be a party, it shall be lawful for the *plaintiff or defendant*, (2) and also for any witness, to be examined or made use of by affidavit, (or in case of Quakers, affirmation,) before any mayor or chief magistrate of the city, &c., in or near which he is resident, which affidavit certified and transmitted," (as directed by the act,) "shall be of the same force and effect in the colony as if the defendant had appeared and sworn the same matters in open court, provided that the addition and place of abode of the party swearing or affirming be stated in the

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(2) The provisions of this act were extended to New South Wales and its dependencies by the 54 Geo. 3, c. 15, which is, except the necessary alteration of names, and the omission of the word negroes in the 4th section, a copy of the act of Geo. 2.

oath." And it is provided "that debts due to His Majesty may be proved in the same manner." (3)

The same act also provides that "houses, lands, negroes, and other hereditaments and real estates in the said plantations belonging to any person indebted, shall be liable to all debts owing by such person to His Majesty, or any of his subjects, and shall be assets for the satisfaction thereof in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and subject to the like remedies and proceedings for seizing, selling, &c., and in like manner as personal estates in any of the plantations respectively are seized, sold, &c., for the satisfaction of debts." That part of the clause which respects negroes had been repealed by 37 Geo. 3, c. 119, and of course would cease to operate when the Slavery Abolition Act took effect; but notwithstanding the repealing statute of Geo. 3, negroes were in fact taken in execution in satisfaction of debts in the colonies at the time of the Commissioners' Report. (4)

By 4 Geo. 3, c. 15, sec. 41, certain penalties imposed by that act for the violation of its provisions relative to the trade and revenue of the British Colonies in America, are to be recovered in any Court of Record or of Vice-Admiralty in the colony or plantation where the offence may have been committed. And this regulation is still further extended by 3 & 4 Wm. 4, c. 59, the act by which the trade of the Colonies is now mainly

(3) See observations on this act, Stokes' Laws of Colonies, 371, 392, to 394. See also, as to the state of law before the act, Com. Dig. Assets, C.; Biens, A. 2; 2 Vent. 358; 2 Chan. Ca. 145; 1 Vern. 453, 469.

(4) See 1 Rep. West India Com. 38, 39, and their observations on the construction put on the act 5 Geo. 2, c. 7, by the lawyers in Barbadoes, ante, p. 58, and 1 Rep. W. I. C. p. 37, 38.



regulated. Section 64 declares "that all penalties and forfeitures which may have been heretofore or may be hereafter incurred under this or any other act relating to the customs, or to trade and navigation, shall and may be prosecuted, sued for, and recovered in any Court of Record or of Vice-Admiralty having jurisdiction in the colony or plantations where the cause of prosecution arises, provided that in cases where a seizure is made in any other colony than that where the forfeiture accrues, such seizure may be prosecuted either in the colony or plantation where the forfeiture accrues, or in the colony or plantation near where the seizure is made; and in cases where there shall happen to be no such courts in either of the last mentioned colonies, then in any Court of Record or Vice-Admiralty having jurisdiction in some British colony or plantation near to that where the forfeiture accrues, or to that where the seizure is made, at the election of the seizer or prosecutor."

The statute 12 Geo. 3, c. 20, which provides that persons standing mute on their arraignment for felony or piracy shall be convicted of the offence charged, is expressly extended to "His Majesty's colonies and plantations in America." (5)

By 13 Geo. 3, c. 14, mortgages of freehold or leasehold estates in the colonies in the West Indies to foreigners are made valid, and may be sued upon, under certain restrictions, notwithstanding the mortgages may be alien enemies.

By the 1 Wm. 4, c. 4, which recites the inconveniences

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(5) By the 7 & 8 Geo. 4, c. 28, s. 2, if any person stands mute on his arraignment, the Court shall, if it think fit, enter a plea of not

guilty, and proceed as if he had pleaded. But this statute is confined by the reciting part to England.

that arose from the patents of public officers in the colonies becoming void on the demise of the late King, it is enacted that all powers vested in governors of colonies, &c., appointed by Geo. 4, shall continue until new patents shall be issued by his present Majesty, and made known in such colony. By sec. 2 it is declared, "that no patent, commission, warrant, or other authority for the exercise of any office or employment, civil or military, within any of His Majesty's plantations or possessions abroad, determinable at the pleasure of His Majesty, or of any of his heirs and successors, shall, by reason of any future demise of the Crown, be vacated, or become void, until the expiration of 18 calendar months next after any such demise of the Crown as aforesaid."

By the 2 Wm. 4, c. 26, reciting the 54 Geo. 3, c. 184, the 59 Geo. 3, c. 67, the 1 Geo. 4, c. 65, and the 1 & 2 Geo. 4, c. 121, (relating to the auditing of colonial accounts of Ceylon, Mauritius, Malta, Trinidad, and the settlements at the Cape of Good Hope,) it is stated that three commissioners had been appointed under the authority of those statutes, and that accounts were then pending before them, and that "it was expedient that as well the said accounts, as all other accounts of the receipt and expenditure of the colonial revenues, and of sums granted in aid thereof, should be examined by the commissioners for auditing the public accounts of Great Britain;" in pursuance of which it is enacted, that after the 5th of April, 1833, the audit of all accounts of the receipt and expenditure of colonial revenues shall be transferred to the commissioners for auditing the public accounts of Great Britain.

And by sec. 3 it is declared, that all superannuation or retired allowances granted by the 54 Geo. 3, c. 184, shall continue to be paid out of the respective revenues

of the colonies of Ceylon, Mauritius, Malta, Trinidad, and the Cape of Good Hope, in such manner as the commissioners of the treasury may direct.

The 2 & 3 Wm. 4, c. 51, (an act to regulate the practice and fees of the Vice-Admiralty Courts abroad,) authorizes the King in Council to make regulations and establish fees in the Vice-Admiralty Courts abroad, which regulations and the tables of fees are to be enrolled in the public books or records of those Courts.

By sec. 2 the table of fees are to be laid before the House of Commons within three calendar months after the establishment or alteration thereof.

By sec. 4 such fees are to be the only lawful fees of the judges, officers, ministers, and practitioners of such courts.

Copies of the regulations and tables of fees are to be hung up in each court.

An appeal to the Admiralty (6) is given to any person who shall feel himself aggrieved by charges in the said Vice-Admiralty Courts; and on summary application the Court of Admiralty may order such charges to be taxed.

By sec. 6, Vice-Admiralty Courts are to have jurisdiction in suits for seamen's wages, pilotage, bot-tomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to His Majesty's service at sea, salvage and droits of Admiralty, notwithstanding the cause of action may have arisen out of the local limits of such court.

The 2 & 3 W. 4, c. 78, (an act to continue certain

(6) By 3 & 4 Wm. 4, c. 51, s. 2, "all appeals or applications in all suits or proceedings in the Courts of Admiralty or Vice-Admiralty abroad which may now by any

law, statute, commission, or usage be made to the High Court of Admiralty in England shall, after 1 June, 1833, be made to His Majesty in Council."

acts relating to the island of Newfoundland, after reciting 5 Geo. 4, c. 67, (relating to the administration of justice in Newfoundland,) and the 5 Geo. 4, c. 68, (regulating the celebration of marriages there,) and the act 10 Geo. 4, c. 17, by which the two former were continued to the 31st of December, 1832, and that it is expedient they should continue in force till altered or repealed by any acts (duly allowed) of the House of Assembly, which His Majesty may at any time see fit to convoke within the said colony of Newfoundland, (and it has since been convoked,) declares them to be continued till they shall be so altered or repealed.

The second section declares that the duties now payable in Newfoundland by the authority of divers acts of Parliament, shall, when such Houses of Assembly have been convoked, be payable, as they shall by act of Assembly (duly allowed) direct; provided that an annual sum, not exceeding 6550*l.*, be applied for the maintenance of the governor, the judges, attorney-general, and colonial secretary there.

The 3 Wm. 4, c. 14, (relating to savings banks,) is extended (s. 35) to Guernsey, Jersey, and the Isle of Man.

The act 3 Wm. 4, c. 15, by which the property of authors in their dramatic productions is for the first time secured to them, extends to all the Colonies. The first section gives to the author the sole right of causing his piece "to be represented at any place or places of dramatic entertainment whatsoever in any part of the United Kingdom, or the Isle of Man, Guernsey and Jersey, or in any part of the British dominions," and forbids others to represent it without his authority. The second section gives him the power, in case such piece shall be represented without his sanction, to sue for the penalty "in any court having jurisdiction in such cases in that

part of the United Kingdom, or of the British dominions, in which the offence shall be committed."

The 3 & 4 Wm. 4, c. 49, recites, "Whereas it is expedient and reasonable that the solemn affirmation of persons of the persuasion of the people called Quakers and of Moravians should be allowed in *all cases where an oath is required*;" it therefore enacts that "every person of the persuasion of the people called Quakers, and every Moravian, be permitted to make his or her solemn affirmation or declaration instead of taking an oath, *in all places* and for all purposes whatsoever where an oath is or shall be required either by the common law or by any act of Parliament already made or hereafter to be made, which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form." A false affirmation to be punished as perjury.

This act does not mention the Colonies; but from the very comprehensive terms employed in it, the rule as to statutes of universal application (7) must be deemed to operate upon it, and to give it effect in all the British dominions. The 3 & 4 Wm. 4, c. 82, is a similar act relating to "Separatists."

IV. We have now arrived at the fourth and last head of remark, viz. some miscellaneous points of English law upon matters relating to the colonies. Points of law connected with the colonies.

First, with respect to the trial in England of *crimes* committed in the colonies, it is a general principle of the English law that crimes are *local*, from which it follows that those committed in the colonies or elsewhere out of the realm cannot be tried in any English court of justice; (8) but by the 11 & 12 Wm. 3, c. 12, it

(7) See ante, p. 8, 15, 16.

3, c. 82, cited in *Rex v. Johnson*,

(8) *Rex v. Munton*, 1 Esp. 62,

6 East, 590.

before the passing of the 42 Geo

is provided that if any governor, lieutenant-governor, deputy-governor, or commander-in-chief of any plantation or colony within His Majesty's dominions beyond the seas shall be guilty of oppressing any of His Majesty's subjects beyond the seas, within their respective governments or commands, or shall be guilty of any other crime or offence contrary to the laws of this realm, or in force within their respective governments or commands, such oppressions, crimes and offences shall be tried in the Court of King's Bench in England, or before such commissioners and in such county of the realm as shall be assigned by His Majesty's commission, and that the same punishments shall be inflicted as are usually inflicted for crimes of the like nature when committed in England. And by a subsequent statute, 42 Geo. 3, c. 85, it is enacted that any person holding a public station, office, or employment out of Great Britain, and guilty of any offence in the exercise of his public functions, may be tried in the King's Bench, either on an information exhibited by the Attorney-General, or an indictment found; and all persons so offending and tried under this act or the statute of William, shall receive the same punishment as is inflicted on similar offences committed in England, and are also liable, at the discretion of the Court, to be adjudged incapable of serving His Majesty or holding any public employment. (9)

There are also several statutes by which the particular crimes of treason, murder, and manslaughter committed out of the realm by any persons, are made triable within the realm of England. (1)

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(9) 8 East, 31; and as to India see the East India Bill, 13 Geo. 3, c. 63, s. 39; 24 Geo. 3, c. 25, s. 64, et seq.

(1) 28 Hen. 8, c. 15; 33 Hen. 8, c. 23; 35 Hen. 8, c. 2; 11 & 12 Wm. 3, c. 7; 11 Geo. 1, c. 29, s. 7; 39 Geo. 3, c. 37; 43 Geo. 3,

With respect to *trespasses and other injuries to real property*; these also are local by our law, so that it is said that no action can be maintained in this country for an injury to real property out of the kingdom, as for instance, for entering a house in Canada. (2) A

c. 113, s. 6. And see two opinions that 28 Hen. 8, c. 15, extends to colonies established before the act was passed, 1 Chal. Op. 199, and 2 Chal. Op. 220, but see also 2 Chal. Op. 202, 203.

(2) Chitty on Commerce, vol. 1, p. 648. The contrary was stated by Lord Mansfield in *Mostyn v. Fabrigas*, Cowp. 176—180; but that part of that case was expressly overruled in *Doulson v. Matthews*, 4 Term Rep. 503, where the judges intimated that the authority of decided cases was too strong to allow them to adopt the opinion of Lord Mansfield.

The doctrine somewhat summarily declared in this latter case, certainly without much argument or consideration, has ever since been the admitted rule of pleading, and is still recognized as such. (Stephen on Pleading, 2d edit. 338, and Chitty on Pleading, vol. 1, 5th edit. p. 299.) Yet it would be difficult to find a justification for it in principle, and even the authorities can hardly be said fully to bear it out. Mr. F. Pollock, in the course of an argument on the case of *Garland v. Carlile*, in the Exchequer Chamber, 17th June 1833, said that their lordships were well aware how law was sometimes made; first, there was some dictum in a *nisi prius* case; then another *nisi prius* case followed that: from the poverty

of the parties, the smallness of the sum in dispute, or from some other cause, neither of them became afterwards the subject of a motion in court, and therefore it was taken for granted that they were acquiesced in; a case subsequently occurred in Banc, and the judges, without further inquiry, thought themselves bound by these two recent decisions which had not been questioned, and thus a hasty ruling at *nisi prius* became at once the law of the land. This happy exposition of the matter seems to be well illustrated by the case of *Doulson v. Matthews*. An action was brought against a person for a trespass committed by him in the plaintiff's house in Canada, both parties being at the time of the action in this country. Lord Kenyon nonsuited the plaintiff on the ground that the action was local. A motion was made to set aside the nonsuit, and the elaborate, able, and convincing judgment of Lord Mansfield in *Mostyn v. Fabrigas* (Cowp. 180) was cited to show that under the particular circumstances of that case the rule as to locality of action did not hold. The answer of Lord Kenyon is simply, "The contrary had been held in a case in the Common Pleas that where the action is on the realty it is local," and thus a judgment delivered by Lord Mansfield, with the concurrence of the other judges, (Aston, Willes and

bill in equity for the delivery in possession of lands in the colonies may be maintained; for though lands in

Ashhurst,) and pronounced, after two arguments, described as extremely able, and after time taken to consider, was unceremoniously overruled. The "case in the Common Pleas" is not quoted in the report of *Doulson v. Matheus*, but it was probably that of *Shelling v. Farmer*, 1 Strange, 646, thus reported:—"In an action of trespass and imprisonment for facts done in the East Indies, the plaintiff laid them all (being transitory\*) in London, and *inter alia* declared for seizing the plaintiff's house, situate *apud London prae'd' in parochia et warda prae'd'*. It was objected *pro def.* that the trespass as to the house was local, and they could not give evidence as to seizing a house in the East Indies. And Eyre, C. J., refused to let the plaintiff give evidence as to the house, comparing it to the case of rent for a house at Barbadoes, where it has been held "you may bring covenant for the rent in England, but an action of debt, which is local, † cannot be brought here." To say nothing of the very inferior importance of a nisi prius decision thus hastily made when compared with the well considered judgment of four such judges as decided the case of *Mostyn v. Fabrigas*, it is not a little singular that though *Shelling v. Farmer* had been antecedently determined, it

was not even quoted in this case by the very learned counsel who argued on behalf of Mr. Mostyn, one of whom (Mr. Buller) afterwards assisted in deciding the case of *Doulson v. Matheus*, and who cannot be supposed to have omitted it for any other reason than because the opinion of Westminster Hall had justly condemned it as bad in itself, or most incorrectly reported. Perhaps both these objections might with propriety be urged against it. The truth seems to be that the absence or the presence of a videlicet has had much to do in deciding questions of demurrer raised upon the point of the locality of the venue. See *Robert v. Harnage*, 2 Lord Raym. 1043; S. C. Salk. 659; and 6 Mod. 228, where in an action brought on a bond really made at Fort St. David, in the East Indies, the declaration stated it to have been made "at London, &c." Per Lord Holt, "you should have said at Fort St. David, &c., to wit, at London." See also 2 East, 497; 6 East, 599; 11 East, 226; 5 Taunt. 789. It is very probable that the real objection in *Shelling v. Farmer* was that the count described the house to be at London instead of alleging it to be in the East Indies, to wit, at London.

Mr. Serjt. Williams and the subsequent learned editors of Saunders'

\* This parenthesis is, as was common with him, a note of the reporter.

† Yet debt lies for use and occupation in any county, *King v. Fraser*, 6 East, 348; *Egler v. Marsden*, 5 Taunt. 25, and 1 Wm. Saund. 74 (2), and the cases there cited.



the plantations are not under the jurisdiction of the Court of Chancery, yet if the parties are in this country,

Rep. seem inclined to think that the stat. 6 R. 2, c. 2, is still in strictness applicable to a variety of cases, to which nevertheless it is in fact never applied, 1 Wms. Saund. 74, (2) and (h). In the latter of these notes the case of a declaration on a bail bond, (*Gregson v. Heath*, 2 Lord Raym. 1455, also reported in *Strange*, 727,) is mentioned, and the judgment there was that the venue was not local. It is true that that judgment is doubted in the note, and the reasons given are stated not to be satisfactory. Still, however, that case has not yet been overturned, although if there be one instance stronger than another in favour of the necessity of adhering to the rule of locality in matters of venue, it must be in a case where the duty to be performed, or the obligation to be contracted, can only occur in a particular county; and such is the fact with an arrest and the taking of a bail bond, which things can be transacted nowhere but in the particular county where the warrant is issued and the officer is appointed. The chief reason for requiring locality in venues is thus stated in *Mostyn v. Fabrigas*, (Cowp. 176):—"There is a formal and substantial distinction as to the locality of trials. The substantial distinction is where the proceeding is *in rem*, and where the effect of the judgment cannot be had if it is laid in a wrong place. That is the case of all ejections where possession is to be delivered by the sheriff of the county; and as trials in England are in particular counties, and the officers are county

officers, the judgment could not have effect if the action was not laid in the proper county." Lord Mansfield goes on to say, "If an action were brought relative to an estate in a foreign country, where the question was a matter of title only, and not of damages, there might be a solid distinction of locality." It has probably been for want of attending to the distinction laid down in this sentence either that *Doulson v. Matthews* has been wrongly decided or reported, or that the books which have since cited that case have applied its doctrine to points to which it was never intended to refer. The loose manner in which it is reported may have occasioned this error. The statement of the case shows that the action was for something more than damages; it was for entering the plaintiff's house, and "expelling him." The last term would seem to indicate that a question of the right of possession was sought to be decided by the action; and Lord Kenyon's observation, "that the cause of action stated in the count was local," might fairly be made with reference to an action having for its object the decision of a question of title, and consequently of the right of possession. The subsequent part of the case would lead to the same conclusion; and the first sentence of Mr. Justice Buller's judgment certainly would not destroy such an inference. It is this: "It is now too late for us to inquire whether it were wise or politic to make a distinction between tran-

that court, acting *in personam*, will enforce the delivery, (see the cases cited in n. 3, p. 89.)

sitory and local actions; it is sufficient for the Court that the law has settled the distinction." Then follows the single phrase, that has by its generality occasioned the application of the rule laid down in this case to others to which it is conceived never to have been meant to apply, "and that an action *quare clausum fregit* is local." Had the words "where the title is brought into dispute" concluded the sentence, the judgment would have been more consonant to the good sense of pleading and to the maxims of justice, and would have stood in accordance with, and not in opposition to, the better considered judgment in *Mostyn v. Fabrigas*. For aught that appears these words might have been accidentally omitted by the reporter; and perhaps if any case of sufficient importance to justify the bringing of *Doulson v. Matthews* under review should arise, such might be the judgment of the judges. But should the Courts think themselves bound by the interpretation hitherto put upon that case, the subject is one deserving the attention of the legislature, and loudly calling for their interference. In the event of the passing of a bill now pending in parliament, the object of which is to empower the judges to alter the rules of pleading, their lordships will constitute for the special purposes of that particular act a legislative body, and will then most probably adopt the opinions and carry into effect the suggestions of the common law commissioners,

who, in speaking on this subject, (3d Rep. p. 14,) have said, with regard to the consequences of a mistake of venue in a local action, "Sound principle, however, seems to dictate that a mistake of this description should not expose the plaintiff to failure." Confining this view to the law of this country, and its operation here, the learned commissioners have recommended that "all actions for the recovery of the realty, and all actions for injury to real property, whether in trespass or trespass on the case should be local," and have assigned as a reason "because the strong presumption is that all the witnesses, or the greater part of them, reside in the county where the trespass was committed." Where, however, this reason of convenience does not exist, or where a great and paramount object is to be secured by the temporary disregard of it, the rule thus to be laid down should be subject to an exception, "for otherwise," in the words of Lord Mansfield, "there would be a failure of justice, and therefore the reason of locality in such an action should not hold."

The nature of the judgment in trespass affords on additional argument against the authority of the decision in *Doulson v. Matthews*. The judgment is only for damages, and there is no reason therefore in the form of the *postea* for confining a man in seeking his remedy against a wrong-doer to the very place in which the wrong was done. Lord Mansfield mentions a case in which

## A bill to account for the rents of lands in the colonies

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an officer under the command of his superior pulled down the houses of some suttlers in one of our colonies. The officer did that which perhaps the circumstances of the case would justify, for these houses had been frequented by the sailors to such an extent that their own health and the discipline of their vessels had been affected by it. One of these suttlers, after being in England, brought an action against the officer, who also happened to be in this country. Lord Mansfield says, "One of the counts was for pulling down the houses. The objection was taken to that count and the case of *Skinner v. The East India Company*," (where the judges held that they could not give relief here against the wrongful possession of houses in India,) "was cited in support of the objection. On the other side they produced from a manuscript note a case before Lord Chief Justice Eyre, where he overruled the objection; \* and I overruled the objection upon this principle, that the reparation here was personal, and for damages, and that otherwise there would be a failure of justice, for it was upon the coast of Nova Scotia, where there were no regular courts of judicature, but if there had been, Captain Gambier might never go there again, and there-

fore the reason of locality in such an action did not hold." It is a curious anomaly in our judicature that while Courts of Common Law have thus held themselves prevented by a mere form from entertaining actions for trespasses on real property where the title was not in question, but only personal damages were sought to be recovered, Courts of Equity have made this same personal responsibility the means of enforcing contracts relating to land in the colonies, and even of putting parties into possession of the land itself.

To a bill for possession of lands in St. Christopher's, defendant demurred to the jurisdiction. Lord Hardwicke, Chancellor.—"This Court has no jurisdiction to put persons into possession in a place where they have their own methods on such occasions, to which the party may have recourse. Lands in the plantations are no more under the jurisdiction of this Court than lands in Scotland, for it only *agit in personam*. The delivery in possession may be enforced *in person*. There have been instances of plantation estates being sold in this Court, and consequently this Court must have a power of enforcing a decree for a sale upon the person ordered to convey." *Roberdeau v. Rous*, 1 Atk. 544; S. C. Rep. Temp. Hardw. 565;

\* Lord C. J. Eyre decided *Shelling v. Farmer*. It is therefore to be regretted that Lord Mansfield did not more fully quote this case; for then, as Lord C. J. Eyre would be proved to have ruled two different ways, it might have been discovered that the apparent contradiction arose from the form of the declaration. The omission of the *videlicet* in *Shelling v. Farmer* was most probably the point on which his lordship's judgment was given, but the report is lamentably defective.

may be supported. And a court of equity in England

and *S. P. Foster v. Vassal*, 3 Atk. 589. This case was afterwards expressly recognized by Lord Arden, M. R., in *Lord Cranstown v. Johnston*, 3 Ves. jun. 182. The principle laid down in it was admitted in argument in *White v. Hall*, 12 Ves. jun. 321, and asserted in judgment both by Leach, Vice-Chancellor, in *Bushby v. Munday*, 5 Madd. 307, and *Beckford v. Kemble*, 1 Sim. & Stu. 7, and by Lord Eldon, Chancellor, in *Harrison v. Gurney*, 2 Jac. & W. 563. It had been acted upon by Lord Chancellor Hardwicke in the celebrated case of *Penn v. Lord Baltimore*, † Ves. 444, where an agreement made in England touching the boundaries of two British provinces in America, was decreed to be executed *in personam*, though it could not be enforced *in rem*, and his lordship used the expression that "an agreement being founded on articles executed in England under seal for mutual consideration would give jurisdiction to the King's Courts, both of law and equity, whatever might be the subject-matter." The authority of the Court was also asserted by that noble and learned lord in *Angus v. Angus*, Rep. Temp. Hard., (edit. 1827,) p. 23. That was the case of a bill for possession of lands in Scotland. A plea to the jurisdiction was held bad, on the ground of not averring that the parties were resident out of the jurisdiction; Lord Hardwicke thus expressed himself: "This had been a good bill if the lands had been in France, provided that the persons were resident here, for the jurisdiction of this Court is

upon the conscience of the party." The "conscience of the party" is acted upon, as the Vice-Chancellor Leach declared in *Bushby v. Munday*, "by constraint of his person, in punishment for the contempt in disobedience of the order of the Court." The authority of the Courts of Common Law can be enforced in a very similar and at least equally efficient manner. If therefore Courts of Equity can justly claim by such means to put parties into possession of lands abroad, though those lands should be in France, where English laws can by no possibility have any force, *a fortiori*, ought the courts of Common Law to entertain an action where the object in view is not the possession of lands in a foreign and independent state, nor even in the colonies of the British empire, but the mere recovery of damages from a defendant resident here, over whom they possess the double power of vindicating their authority by seizure of his goods and constraint of his person. To avoid by a mere point of form, upon a case of any questionable authority, the exercise of this their well founded jurisdiction, is to create "a failure of justice," which it cannot be for a moment supposed they should desire to witness.

The bill above referred to, as pending in Parliament, has passed into a law. The judges have now by the 3 & 4 Wm. 4, c. 42, the unquestioned power of remedying the evil of a failure of justice, to which it has been the object of this note humbly to call their attention.

The recommendations of the Com-

may enforce the specific performance of a contract relating to such lands. (3) But where the question upon the construction of the contract for a security by way of mortgage had been before a court of competent jurisdiction in the colony, and a foreclosure and sale directed, and certain allegations of fraud were merely general, and denied, an injunction was refused in the Court of Chancery in England, on the ground of want of jurisdiction. (4) The motion for the injunction there, was, in effect, an appeal from a court of competent jurisdiction in the colony (Demerara) to the Chancery here, and no such appeal would lie. Sir S. Romilly (Solicitor-General) and Mr. Bell, in arguing against the injunction, said, "It is not contended that this court has not jurisdiction over contracts relating to possessions in the colonies of this country, but it does not hold in this particular case, a court of competent jurisdiction having already decided."

As to personal injuries and breaches of contract, they are transitory in their nature, and for these, though they take place abroad, actions may be main-

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missioners with respect to the consequences of a wrong venue in local actions have been carried into effect (s. 22) by giving to the Court the power of directing local actions to be tried in any county. The section gives that power only in the case of "any action depending in any of the said superior courts;" and as the Courts have since the period when *Doulson v. Matthews* was decided acted on the authority of that case, and refused to entertain actions for damages for trespasses to real property abroad, and as "actions de-

pending" must mean actions properly depending, it would seem that the difficulty as to these particular actions has not been removed by the statute. On the discretion of the judges alone the colonists must therefore rely for a remedy to the evil.

(3) *Roberdeau v. Rous*, 1 Atk. 544; *S. P. Foster v. Vassal*, 3 Atk. 589; *Penn v. Lord Baltimore*, 1 Vcs. 414; *White v. Hall*, 12 Ves. 321; *Jackson v. Petrie*, 10 Ves. 165.

(4) *White v. Hall*, 12 Ves. 321.

tained in the courts of this country. (5) And it is said that the Court of King's Bench has jurisdiction to send a habeas corpus to the plantations. (6)

With respect to the construction of contracts made in the colonies, it is to be observed that contracts made abroad are expounded and have effect in England according to the law of the country where they are made, though the English law might affect them differently. Therefore, if a certain stamp be required by the law of the colony where the contract was made, though not required in England, the contract, unless it has been stamped according to the law of the colony, cannot be enforced in England. (7) And if by the colonial law a chose in action is in any case assignable, the assignee may in that case support an action in the English courts, though choses in action are not assignable here. (8)

So, the rate of interest on a debt is calculated according to the law of the colony where it was contracted, though sued for in England, where the rate is different; and in a court of equity the debtor is allowed the *rate of exchange* of the country where the debt was contracted. (9) In an action on a bill of exchange drawn in Bermuda on a person in England, and also payable

(5) *Mostyn v. Fabrigas*, Cowp. 161, 162; 2 Sir W. Black. 929, S. C.; 11 Harg. State Trials, S. C.; *Cooke v. Maxwell*, 2 Stark. 183; *Wey v. Yally*, 6 Mod. 195; *Lord Bellamont's case*, 2 Salk. 625. See 42 Geo. 3, c. 85, s. 6.

(6) *Rex v. Cowle*, 2 Burr, 856; Stokes' Law of Colonies, 5, 6.

(7) *Alves v. Hodson*, 7 T. R. 241;

2 Esp. Rep. 528; *Clegg v. Levy*, 3 Camp. 167; *Chitty on Bills*, 74, 75, 5th edit.

(8) *Innes v. Dunlop*, 8 T. R. 595; *O'Callagan v. Marchioness of Thomond*, 3 Taunt. 82.

(9) *Lord Dungannon v. Hackett*, cited *Lane v. Nichols*, 1 Eq. Abr. 289, Pl. 1; 2 *Bridgman's Ind.* 88.

in England, the plaintiff recovered  $7\frac{1}{2}$  per cent. interest, being the rate of interest at Bermuda. (1)

With respect to the *Statute of Usury*, as applicable to the colonies, a doubt was entertained whether the statute of 12 Ann. st. 2, c. 16, which reduced the rate of interest to 5 per cent., did not extend to money lent on lands in Ireland or the Plantations, when the mortgage was executed in Great Britain; but the stat. 14 Geo. 3, c. 79, declares all such securities made previously to that act, to be valid, notwithstanding the 12 Ann, where the interest is not more than the established rate of the particular place, and that all future securities of the like kind shall also be valid where the interest is not more than 6 per cent. (2) and the money lent is not known at the time to exceed the value of the property pledged. However, it has been held that the stat. 14 Geo. 3, is an enabling act, extending only to particular cases, and it does not extend to such bonds as are mere personal contracts, but only protects mortgages and other securities respecting lands in Ireland or the Plantations. (3) Where a debt was contracted in England, but the bond was taken for it in Ireland, to be paid at a certain time and at 7 per cent., it was held by the Court of Chancery in England that it should carry Irish interest; (4) but a different

(1) *Dongan v. Banks*, Chitty on Bills, 540, 5th edit.

(2) *Steel v. Sowerby*, 6 T. R. 171, 172, and note.

(3) *Dewar v. Span*, 3 T. R. 425.

(4) *Conner v. Lord Bellamont*, 2 Atk. 382; Prec. Chanc. 128; 1 P. Wms. 395, 396; 2 Atk. 465. The principle laid down by these cases, that the place where the instrument

is made should give the rule as to the amount of interest secured by that instrument, has been recognised by the Court of King's Bench in *Kearney v. King*, 2 B. & A. 301, and *Sprawle v. Legge*, 1 B. & C. 16, where bills drawn in Ireland for so many pounds "sterling," being made the subject of actions in England, the parties were held bound to state in the de-

doctrine was held when the bond, contract, or mortgage was executed in England, in which case only 5 per cent. interest is allowed, independently of the statute 14 Geo. 3. (5) So that it seems that only 5 per cent. interest can now be reserved on securities executed in England, and not made on land in Ireland or the Plantations. In case a bond or other debt contracted in Jamaica be made payable in London, it has been held that the expense of commission to the agent remitting the money falls on the debtor. (6)

As to the effect of a colonial or foreign judgment, an action may be maintained in England on a judgment obtained in a court of law or equity in the colonies, or elsewhere, out of the realm; but such judgment is considered here only as a simple contract debt, for which *assumpsit* is maintainable. It is therefore not conclusively binding as an English judgment would be, (7) but the defendant is at liberty to show that the

claration something to show that "pounds Irish" were meant. Bayley on Bills, 5th ed. 389, 390.

(5) *Phipps v. Lord Anglesea*, 1 P. Wms. 696; *Stapleton v. Conway*, 3 Atk. 727; 1 Ves. 427, and *Dewar v. Span*, 3 T. R. 425.

(6) *Cash v. Kennion*, 11 Ves. 314.

(7) The reason is thus stated by Lord Chief Justice Eyre (2 H. Bl. 410) in a judgment given in the Exchequer Chamber, in the case of *Phillips v. Hunter*, "It is in one way only that the sentence or judgment of a court is examinable in our courts, and that is, where the party who claims the benefit of it applies to our courts to enforce it. When it is thus voluntarily submitted to

our jurisdiction, we treat it not as obligatory to the extent to which it would be obligatory, perhaps, in the country in which it was pronounced, nor as obligatory to the extent to which by our law sentences are obligatory, nor as conclusive, but as matter *in pais*, as consideration *prima facie* sufficient to raise a promise; we examine it as we do all other considerations or promises, and for that purpose we receive evidence of what the law of the foreign state is, and whether the judgment is warranted by that law. In all other cases we give entire faith and credit to the sentences of foreign courts, and consider them as conclusive upon us." Another reason for the distinction probably is, that the



decision ought to have been otherwise, and he should not take issue upon it by a plea nul tiel record, but by a plea to the country. (8) If it do not appear by the transcript of the proceedings in the colony, that the party against whom the judgment was obtained was at one time or other resident there, or subject to the jurisdiction of the colonial court, but only that he was summoned by nailing up a copy of the declaration at the court-house door, no action can be maintained here on the judgment, for a party cannot be bound by the judgment of a court if he was never within its jurisdiction. (9) But an action may be maintained here on a foreign judgment obtained by default, which states that defendant appeared by attorney, without proving that the attorney mentioned had authority to appear, or that the defendant was living within the jurisdiction of the foreign court. (1) Though, in general, a defendant sued in England upon a foreign judgment, is at liberty to show that it was erroneous, yet where an action was brought here upon a covenant entered into by the defendant to indemnify the plaintiff from all debts due from a partnership in which he had been engaged with the defendant, and from all suits instituted in consequence of the

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judges are supposed to know the law on which the judgments of any tribunals in this country are founded, and can at once decide whether such judgments are warranted by the law; whereas foreign tribunals and courts in our colonies being called on to administer laws more or less different from our own, the judges here require information before they can arrive at any conclusion on the subject.

(8) *Walker v. Witter*, Doug. 1,

and cases there cited in notes; *Messin v. Lord Massareene*, 4 T. R. 493; *Sadler v. Robins*, 1 Camp. 253; *O'Callagan v. Marchioness of Thomond*, 3 Taunt. 82, 84.

(9) *Buchanan v. Rucker*, 9 East, 192, 1 Camp. 63; *Cavan v. Stewart*, 1 Stark. 525; *Fisher v. Lane*, 3 Wils. 297, 304; *Cooke v. Maxwell*, 2 Stark. 183.

(1) *Molony v. Gibbons*, 2 Camp. 502.

partnership, proof of the proceedings in a Court of Chancery in Grenada, against the late partners, for the recovery of a partnership debt, in which a decree passed for want of an answer, and a sequestration issued against the plaintiff's estate, was held conclusive against the defendant, who was not allowed to show that the proceedings were erroneous. (2) In an action on the judgment of a colonial court, it is in general necessary to prove the handwriting of the judge by whom it is subscribed, and the authenticity of the seal affixed. If there is a seal belonging to the court, it should be used for the purpose of authenticating its judgments, and should be established in evidence by a person acquainted with the impression. But if evidence be given that the court has no seal, the judgment may be established by proving the signature of the judge. (3) A copy of a judgment in the Supreme Court of Jamaica, made by the chief clerk, cannot be received in evidence in a court of justice in this country, although it appear that such copies are usually admitted as good proof in the courts of Jamaica. (4) An exemplification authenticated by the seal of the court, is, however, admissible. (5)

Whether a judgment given in favour of a defendant in a colonial court is pleadable in bar or available by way of defence to a second action brought on the same demand in an English court, is a point that appears to be not clearly settled; but the doctrine above stated

(2) *Tarleton v. Tarleton*, 4 M. & S. 20.

(3) *Henry v. Adey*, 3 East, 221; *Buchanan v. Rucker*, 1 Camp. 63; *Flindt v. Atkins*, 3 Camp. 215;

*Alves v. Bunbury*, 4 Camp. 28; *Carvan v. Stewart*, 1 Stark. 525.

(4) *Appleton v. Lord Braybrook*, and *Black v. Lord Braybrook*, 2 Stark. 6 ct seq. and 6 M. & S. 34.

(5) *Ibid.*

with respect to the inconclusiveness of a colonial judgment, where an action is brought to enforce it in this country, may be thought to have a strong bearing on that question. (6)

Upon the application of the statute of limitations to colonial transactions, the following case has been decided. An action being brought here for a debt contracted in India, it was held sustainable, though more than six years had elapsed since the making of the contract. The creditor and debtor were, for some time after the cause of action accrued, resident in Calcutta; the creditor then returned to England,—the debtor remained in India more than six years, and then returned to England, and the action was brought within six years after his return. The action was held sustainable notwithstanding the lapse of time, and notwithstanding the circumstance that the Supreme Court at Calcutta, within the jurisdiction of which the transaction arose,

(6) *Plummer v. Woodburn*, 4 Bayn. & Cress. 625, and the cases cited in the very learned argument there. The court, in that instance, decided that a plea in bar setting up a foreign judgment for the defendant was bad, inasmuch as it did not show that that judgment was a final judgment in the place where it was given. The inference from this would seem to be that, had the plea shown that judgment to be a final judgment, so as to bar the plaintiff from bringing a fresh action in the foreign court in respect of the same demand, it would have been sufficient here. The same inference might be drawn from the case of *Level v. Hall*, Cro. Jac. 284, which is copied at the end of the

report of *Plummer v. Woodburn*. See also *Potter v. Brown*, 5 East, where Lord Ellenborough broadly lays down the doctrine that "what is a discharge of a debt in the country where it was contracted is a discharge of it every where;" and afterwards says, "if the bankruptcy and certificate would have been a discharge of the debt in America, it must by the comity of the law of nations be the same here." Of course if one legal proceeding would have this effect, another of equal authority in the foreign state ought to be entitled to the same respect. The difference in the result in *Plummer v. Woodburn* must therefore have arisen from the mode of pleading the judgment.

was held under a charter that authorized the court to exercise the same jurisdiction in civil cases as is exercised by the Court of King's Bench in England at common law (7), for that charter did not alter the effect of the statute of limitations as applied in the courts of justice in this country, and therefore, even assuming that the provisions of that statute were transferred to India by the terms of the charter, as auxiliary to the common law, yet, according to the statute as it was in force here, it was held that a creditor was not barred by the lapse of six years after the debt arose, as the debtor had been resident out of the realm. (8)

With respect to the effect of a *colonial* or foreign certificate in bankruptcy, where an action was brought in this country on a bill of exchange given by the plaintiff to the defendant, in a foreign state, where

(7) The charter granted under 13 Geo. 3, c. 63, s. 13. See that charter set forth in substance in *Williams v. Jones*, 13 East, 440, 441.

(8) *Williams v. Jones*, 13 East, 439; 21 Jac. 1, c. 16, s. 7; 4 Ann, c. 16, s. 19.

In the course of the argument in this case, Lord Ellenborough asked how the court were to take judicial notice of any parts of the charter not set out in the pleadings; the plaintiff's counsel at first said that as the act 13 Geo. 3, c. 63, authorized the granting of the charter, the provisions of the latter must be taken to be incorporated into the act. The question was not decided, as the defendant's counsel said that all the parts of the charter material for the argument were set out in the pleadings. There can be little doubt that if an act of parliament authorizes the grant of a charter

and directs what shall be its provisions, either in a general or particular manner, the courts are bound to presume that the King has properly exercised the powers vested in him by the act, and they might therefore refuse to try incidentally whether the charter was a good charter under the act. As the act itself was a public act, it must be taken notice of by the courts here, but whether the charter granted in pursuance of it must be equally entitled to judicial notice, may be a more nice and difficult question. Charters to corporations may be granted by the crown under the authority of acts of parliament, *Rex v. Miller*, 6 T. R. 268, and *Rex v. Hathorne*, 5 B. & C., 410, and such charters are specially pleaded. It would seem, therefore, by the rule of analogy that the court could not have taken judicial notice of the charter except as pleaded.

both parties were resident, but drawn on a person in England, and afterwards protested here for non-acceptance; and the defendant, while he continued to reside abroad, became a bankrupt and obtained his certificate by the law of that state, it was held that such certificate was a bar to an action on the bill founded on the circumstance of its not having been accepted. (9) But a discharge under a commission of bankrupt in a foreign country, is no bar to an action in England against the bankrupt by a subject of this country, for a debt arising here. (1)

With respect to the *Evidence required in our Courts as to Colonial transactions*, that matter is now provided for by a recent statute. (2) The first section of that statute recites the act 13 Geo. 3, c. 63, relating to the examination of witnesses in India, and extends the provisions of that statute, so far as they relate to the examination of witnesses in actions at law, "to all colonies, islands, plantations, and places under the dominion of His Majesty in foreign parts, and to the judges of the several courts therein, and to all actions depending in His Majesty's courts of law at Westminster, in what place or county soever the cause of action may have arisen, and whether the same may have arisen within the jurisdiction of the court, to the judges whereof the writ or commission may be directed, or elsewhere," Upon the 13 Geo. 3, c. 63, the Court of Common Pleas held (3) that a *mandamus* might be granted to the court in India to examine witnesses on behalf of either a plaintiff or defendant in a civil action. By s. 4. the courts at Westminster, Lancaster, and

(9) *Potter v. Brown*, 5 East, 124.

(2) 1 W. 4, c. 22.

(1) *Smith v. Buchannan*, 1 East, 6.  
See also *Sidaway v. Hay*, 3 B. & C. 12.

(3) *Grillard v. Hogue*, 1 Brod. & Bing. 519.

Durham, may order the examination of witnesses within their jurisdiction by an officer of the court, or may order a commission for that purpose out of their jurisdiction, and may give such directions touching the time, place, and manner of such examinations as to them shall seem fit. But by section 10 of the same act, no examination *to be taken by virtue* of that act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the judge that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable, from permanent sickness, or other permanent infirmity, to attend the trial. This statute was passed expressly for the purpose of extending to all the colonies, &c. under the dominion of His Majesty, the provisions of the 13 Geo. 3, c. 63, s. 40, which related to India alone. (See also 26 Geo. 3, c. 57, s. 38, *post*, and the 24 Geo. 3, c. 25, s. 88, therein recited.) It has however gone further than that or any other statute on the subject of prosecutions for perjury, for it has declared (sec. 7) that if any person examined under the authority of that act shall wilfully and corruptly give any false evidence, every person so offending shall be deemed guilty of perjury, and may be indicted in the county where such offence was committed, "or in the county of Middlesex, if the evidence be given out of England." (4)

By 42 Geo. 3, c. 85, passed to facilitate the trial and punishment of persons holding public employments who

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(4) As to the methods prescribed by different statutes for obtaining evidence from India, see 13 Geo. 3, c. 63; and as to the practice in such cases and in others, (now otherwise

provided for by the act 1 Wm. 4, c. 22,) see Tidd's Pract. 9th edit. 810, et seq., and the cases there cited.

had committed offences abroad, it is provided that when prosecutions are instituted by virtue of the act, it shall be lawful for the Court of King's Bench, on motion, and after sufficient notice, either on behalf of the prosecutor or defendant, to award writs of mandamus, in its discretion, to the chief justice or judge of any court of judicature in the county or island, or near to the place where the offence has been committed, or to any governor, lieutenant-governor, or other person having chief authority in such country, or to any other person residing there, as the court may think expedient, for the purpose of obtaining and receiving proofs concerning the matters charged in the indictment or information, and after pointing out the mode in which a court is to be held for receiving the proofs and the examinations taken, and transmitted to England and delivered into court, the statute proceeds to enact, that such depositions being duly taken and returned, shall be allowed and read, and shall be as good evidence as if the witnesses had been sworn and examined in court. The Court of King's Bench may also, on such a prosecution, order an examination of witnesses *de bene* on interrogatories, where the *vivâ voce* testimony of such witnesses cannot be conveniently had. But as the 42 Geo. 3 directs that the writs of mandamus shall be issued in the discretion of the court, it has been holden that a defendant indicted here for a misdemeanor, committed by him in the West Indies in a public capacity, is not entitled to postpone the trial till the return of the writs of mandamus, on an affidavit in the common form for putting off a trial on account of the absence of a material witness; but he must lay before the court such special grounds by affidavit as may reasonably induce them to think that the witnesses

sought to be examined are material to his defence. (5) The prosecutor, however, is entitled to writs of mandamus for this purpose, as a matter of course, and on an affidavit stating the special circumstances, writs of mandamus have been issued on the part of the defendant.

With respect to the proof of writings attested in the East Indies, the statute 26 Geo. 3, c. 57, sec. 38, enacts that whenever any bond, or other deed, or writing executed in the East Indies, or attested by any person or persons resident there, is offered in evidence in any court of justice in Great Britain, it shall be sufficient to prove by one or more credible witness or witnesses, that the name or names subscribed to such bond, deed, or writing, is the proper handwriting of the obligor or other party, and that the name of the attesting witness is his handwriting, and that the witness is resident in the East Indies. And in like manner, all courts of justice in the East Indies are bound to admit the same proof of the execution of bonds and other deeds and writings executed and attested in Great Britain. And such proof shall be deemed as good evidence of the due execution of the bonds and other deeds and writings as if the witnesses were dead. Since this statute, it has been laid down as a general rule of evidence, not confined to the East Indies, that when the subscribing witness to a deed, or any other written instrument, is absent in a foreign country, and consequently is not amenable to the process of our courts of justice, it is sufficient to prove the witness's handwriting, (6) although we have seen it is required

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(5) *Rex v. Jones*, 8 East, 31, and *Esp. 2*; *Gough v. Cecil*, Selwyn, Picton's case cited *ibid.* 34. 516; *Adam v. Kerr*, 1 Bos. & Pul.

(6) Vide *Cooper v. Mursden*, 1 360; *Currey v. Child*, 3 Camp.



by the statute that the handwriting of the party to the instrument should be also proved; and this proof has been also required by high legal authorities, on the ground that if the attesting witness were present he would prove not merely that the instrument was executed, but the identity of the person executing it, for the proof of the handwriting of the attesting witness only establishes that some person executed the instrument by the name which it purports to bear, but does not go to establish the identity of that person. (7) However, in a late case, where an action was brought on a promissory note, and the subscribing witness was dead, it was held sufficient to prove his handwriting, and that the defendant was present when the note was prepared, without proving the handwriting of the defendant. (8)

As to Proof of *Colonial or Foreign Law*.—It sometimes becomes necessary in our courts to show what is the law of a colony or foreign country,—for example, to show that a contract made abroad was not valid according to the law of the place. In such cases the foreign or colonial law is considered as a fact, and must be proved according to the same rules of evidence which apply to other matters of fact. If the law is in writing, an authenticated copy of it must be produced. If not in writing, it must be proved by some witness acquainted with the laws of the country in question. (9)

283; *Cunliffe v. Sefton*, 2 East, 183; *Prince v. Blackburn*, 2 East, 250; *Phil. Ev.* 4 ed. 513; 1 Stark, *Evid.* 342; *Crosby v. Percy*, 1 Taunt. 354, 462, and *Burt v. Walker*, 4 B. & A. 697.

(7) *Wallis v. Delancey*, 7 T. R. 266, n.; *Nelson v. Whittal*, 1 B. & A. 21; vide *Coghlan v. Williamson*, Doug. 93.

(8) *Nelson v. Whittal*, 1 B. & A. 19.

(9) *Clegg v. Levy*, 3 Camp. 166; *Mostyn v. Fabrigas*, Cowp. 174; *Collett v. Lord Keith*, 2 East, 261; *Douglas v. Brown*, 2 Dow. & Clark, 171, and see *Inglis v. Usherwood*, 1 East, 515, and *Bohtlingk v. Inglis*, 3 East, 381.

As to *Prerogative Writs*.—Though the ordinary writs of process from the English courts do not of course run in the colonies, yet *prerogative writs*, such as mandamus, prohibition, habeas corpus, and certiorari, may issue, on a proper case, to every dominion of the crown; but not to a foreign dominion, and Scotland being governed by its own law, is in this sense foreign. And even as to a colony, it being in the discretion of the courts whether they will issue these writs or not, they would not chuse to exercise that power where the cause is one in which they cannot properly judge or give the necessary relief. Therefore, on imprisonments in the plantations, it has been more usual to complain to the King in Council, and petition for an order to bail or discharge, than to apply to the King's Bench for an habeas corpus. (1) However, it is clear that the King's Bench has that jurisdiction, and it is expressly noticed and reserved by the Act of Assembly respectively establishing the Courts of King's Bench and Common Pleas in St. Christopher and Nevis. (2)

As to the effect of *Assignments in Bankruptcy in England on Property in the Colonies*.—In the case of bankruptcy and a commission issuing against a trader in this country, all his personal property in the plantations vests in his assignees from the time of the bankruptcy; and therefore if a creditor, having notice of a bankruptcy, and all the parties being resident in England, and the debt contracted there, avails himself of the process of the law of England, (as by making affidavit of

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(1) *Rex v. Cowle*, 2 Burr. 856; Cro. Jac. 484.

(2) Stokes's Law of Colonies, 6, and the authorities there cited.

his debt) to proceed by attachment against the bankrupt's effects in one of the colonies, or even in any independent state, and obtain judgment and execution, he cannot retain as against the assignee the money so levied. (3) It should seem, however, that a creditor in the foreign country, obtaining payment of his debt, and afterwards coming to this country, would not be liable to refund to the assignees here, if the law of that country preferred him to the assignees and was set in motion of itself and without any aid from the law of this country or the tribunals here. (4) If, on the contrary, the creditor resided here, and the first step in the case was the making an affidavit of debt here, to be afterwards transmitted to the foreign country, (under 5 Geo. 2, c. 7,) by which the process was in fact commenced in this country, the creditor would be liable to refund to the assignees, for no creditor, resident in England and subject to its laws, shall avail himself of a proceeding of that law to enable him to get possession of a debt from those who, by the law of England, are entitled to it and have the distribution of it for the benefit of all the creditors. (5)

On the subject of the bankrupt laws, it is necessary to mention two important additions to the provisions of former statutes.—By the act now regulating bankruptcies in England, 6 Geo. 4, c. 16, s. 61, it is

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(3) *Hunter v. Potts*, 4 T. R. 182; *Sills v. Worswick*, 1 Hen. Bl. 665; *Cullen's Bankrupt Law*, 243, 249; *Waring v. Knight*, *Cooke's Bankrupt Law*, 307, et seq.; *Cleve v. Mills*, ib. 303; *Mawdesley v. Parke*, cited 2 Hen. Bl. 680. But see *Philips v. Hunter*, 2 H. Bl. 402, where C. J. Eyre dissents from this

doctrine, and *Brickwood v. Miller*, 3 Mer. 279, where Sir W. Grant limits it to cases in which the domicile of the partnership was completely English, and all its concerns were subject to English law.

(4) *Sills v. Worswick*, 1 Hen. Bl. 693.

(5) *Ibid.* 690.

enacted that the assignees shall be chosen at the second meeting of the creditors, and it includes among the persons entitled to vote at such choice "any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, in case of creditors residing out of England, by oath before a magistrate where the party shall be residing, duly attested by a notary public, British minister, or consul." By the 64th section of the same statute "The commissioners shall, by deed indented and inrolled in any of His Majesty's courts of record, convey to the assignees, for the benefit of the creditors, all lands, tenements, and hereditaments, except copy or customary-hold, in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies belonging to His Majesty, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled in any of such lands, tenements, or hereditaments, and of which he might according to the laws of the several countries, dominions, plantations, or colonies, have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert to, or come to such bankrupt, before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, and every such deed shall be valid against the bankrupt, and against all persons claiming under him, provided that where according to the laws of any such plantation or colony such deed would require registration, inrolment, or recording, the same shall be so registered, inrolled, or recorded, according to the laws of such plantation or colony; and no such deed shall invalidate the title of any purchaser for valuable consideration, prior to such registration, inrolment, or

recording, without notice that the commission has issued."

As to the effect of an English *Probate* or Grant of *Administration* on Property in the Colonies.—If a British subject, domiciled in England, die here, a probate granted by the Prerogative Court binds the property in the plantations and the probate granted there. (6) And Lord Hardwicke laid down the rule, that debts due in Scotland to an English subject resident here, who died intestate, were distributable when recovered, according to the laws of England, and that the question would be the same respecting the goods of an intestate in France or other foreign country. (7) And the personal estate of an intestate is distributable according to the laws of the country where he was resident at his death. (8) Lord Loughborough once said (9) "It is a clear proposition, not only of the law of England, but of every country in the world where the law has the semblance of science, that personal property has no locality, but is subject to the law which governs the person of the owner." In conformity with this principle the Court of Exchequer held (1) that American, Austrian, French, and Russian stock, the property of a testator domiciled in this country at the time of his death, was liable to legacy duty, and (2) that legacy duty was not payable on legacies left by a testator who was born in Scotland but resided and died in India, though the money, the produce of his Indian property,

(6) *Burn v. Cole*, cited 4 T. R. 135.

(7) *Thomas v. Watkins*, 2 Ves. 35.

(8) *Pipon v. Pipon*, Ambler, 25, 2d edit. 1828, and the cases cited by the learned editor, n. 2, p. 26.

(9) *In Sill v. Worswick*, 1 H. B. 691.

(1) *In re Ewin*, 1 Cr. & Jer. 151.

(2) *Jackson v. Forbes*, 2 Cr. & Jer. 332.

was sent to bankers in England and invested in the funds here in their names, and the stock was afterwards transferred into the name of the Accountant General of the Court of Chancery and made the subject of a suit and a decree in that court.

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## A P P E A L S.

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THE right of determining in the last resort all controversies between the citizens of a state has always been considered at once the best evidence and the firmest safeguard of the possession of sovereign power. (3) When in the ancient republics of Greece and Rome that power resided in the citizens at large, the majesty of the people was asserted by its exercise in the supervision of decrees pronounced by the ordinary tribunals. (4) The usurpers of sovereign authority in those states hardly thought themselves secure till, in addition to the command of the army, and the highest offices in the priesthood, they had obtained the right formerly possessed by the people as a court

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(3) "The nature of this supreme power consists in pronouncing judgment in the last resort and without appeal, in opposition to the tribunals which the sovereign himself has established, and which derive all their authority from him. See Grotius, bk. 2, c. 4, s. 13, and the *Jus Publicum Universale*, by Mr. Bohmer, bk. 2, c. 7, s. 15, et seq. Barbeyrac's notes to Puffendorff's *Rights of Nature and Nations*, bk. 7, c. 4, n. 4.

(4) The administration of justice

is the most ancient office of the Prince. It was exercised by the Roman Kings, and abused by Tarquin, who alone, without laws or council, pronounced his arbitrary judgments. The First Consuls succeeded to this regal prerogative, but the sacred right of appeal soon abolished the jurisdiction of the magistrate, and all public causes were decided by the superior tribunal of the people. Gibbon's *Decline and Fall*, c. 44.

of final appeal. When the men of the north emigrated in large hordes, under the direction of a favourite leader, though his voice was supreme in the moment of battle, the assembled army was at all other times the judges of right, and he was admitted but to a questionable degree of superiority. (5) The settlement of these wanderers in the countries they had conquered, rendered the continuance of this wild and irregular administration of political affairs and internal government very inconvenient, if not impossible, and the chiefs of their various tribes were then allowed to assume those powers which had been formerly guarded with so much jealousy by the people themselves. A sort of military subordination in peace became necessary, in order to preserve acquisitions made in war; and as the cultivators of the soil could not be assembled at a moment's warning, like the armed followers of a warlike adventurer, the boisterous freedom of the rapacious invader was by common consent allowed to sink, with almost miraculous speed, into the slavish submission of the feudal settler. The power thus obtained, once secured in the hands of an individual, was the last he was willing to part from, either to his fellow

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(5) Stuart's *View of Society in Europe*, ss. 1, 3 and the notes; Tacit. de Mor. Ger. 7, xi. Charlevoix (*Journ. Hist. Lett.* 18,) says something of the same kind with respect to the American Indians. "Tout doit etre examiné et arrêté dans le conseil des anciens, qui juge en dernière instance." Mr. Adair, (*Hist. American Indians*, p. 428,) in the same manner observes that "the power of their chiefs is an empty sound. They can only persuade or dissuade the people, either by the force of good

nature and clear reasoning, or by colouring things so as to suit their prevailing passions." The rule, from the above examples, would seem to have been universal that "the people prescribed the regulations they were to obey. They marched to the National Assembly to judge, to reform, and to punish, and the magistrate and the sovereign, instead of controlling their power, were to respect and submit to it." Stuart's *View of Society*.

citizens or to his sovereign. The distinguishing mark of the residence of a powerful noble was not unfrequently the erection upon his domain of an instrument of capital punishment; and the right of "la haute justice," or sovereign unappealable decision, even in matters of life and death, was a prerogative he was at all times ready to assert. (6) The superior lord of these chieftains or nobles, the King himself, would have been treated as an invader, and all the duties of allegiance to him would have been forgotten, had he ventured to dispute the right of the noble to punish, unquestioned, all delinquencies committed within the limits of his seignory. The wisest among the feudal princes endeavoured to divide and weaken a power they could not openly dispute. They flattered their most favourite and powerful nobles by constituting them, with themselves, a tribunal to decide appeals from inferior lordships; and when the benefits of this system had been duly felt, they made no grants of lordships which they did not accompany with the condition that the prince in his Council should be the final ar-

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(6) Robertson's *State of Europe*, and *Proofs and Illustrations*, n. 23. Dr. Robertson speaks as if he considered these privileges to be unlawful encroachments on the sovereign power. This mode of viewing the question assumes that the royal prerogative was well defined and lawfully established, and had taken its rise immediately upon the extinction of the popular authority. The assumption seems little warranted by the able work of this learned writer, which indeed is marked in every page with proof that when the fabric of popular power

crumbled to pieces, each leader took for his share as large a quantity of the materials as he could possibly secure. The King, as the ancient Spanish Cortes used to tell their sovereign, was (though in a different sense from that in which they employed the words) better off than any one of the rest, but yet much inferior to them all. It was by raising up the commons to the dignity of a third estate that the Kings usually succeeded in establishing a well understood and well guarded prerogative.



biter of disputes arising within them. In this manner the Dukes of Normandy, the powerful feudal descendants of the leader of the free Norsemen, constituted themselves judges in the last resort of the decisions pronounced in the tribunals of their dependent lordships of Jersey, Guernsey and Alderney; for by such a proceeding they found they could best assert and preserve their superiority. The form of a Parliament, consisting of elected representatives, was then unknown; but a council, composed of the chief leaders of the state, with the Prince at its head, was a body possessed at once of the highest degree of power and influence. The highest ecclesiastics, in right of their baronial tenures, as well as by virtue of their learning and sacred character, could sit, as advisers of the sovereign, in this council, whose decrees, as they could be irresistibly enforced, were implicitly obeyed. In the same manner and on the same principles, the House of Lords, the Supreme Council of the State, in which too the King formerly presided in person, assumed those powers as a court of final appeal, which it now daily exercises.

Mr. Pownal thinks, with much reason, that the Kings of England succeeded, as Dukes of Normandy, to this right of deciding appeals from the tribunals of Jersey and Guernsey; and although the right itself might perhaps be considered to have ceased with the possession of the Duchy on which it had depended, the power of the Kings of England was sufficient to ensure obedience to its continued exercise. From the example thus afforded, he is of opinion that the authority of the King in Council to decide on appeals from the colonies has by analogy been deduced. He says, (7) "At the time of settling these colonies there was no

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(7) Administration of the Colonies, pp. 82, 83.

precedent of a judicatory besides those within the realm, except in the cases of Guernsey and Jersey, the remnants of the Duchy of Normandy, and not united within the realm. According to the custom of Normandy, appeals lay to the Duke in Council, and upon this ground appeals lay from the judicatories of these islands to the King here as Duke in Council, and upon this general precedent was an appeal from the judicatories of the colonies to the King in Council settled."

Mr. Justice Blackstone appears to entertain the same opinion as to the origin of the power of the King in Council, for in speaking on this subject he observes, (8) "The King in his Council exercises original jurisdiction upon the principles of feudal sovereignty; and so likewise when any person claims an island or a province in the nature of a feudal principality by grant from the King or his ancestors, the determination of that right belongs to His Majesty in Council. And from all the dominions of the crown beyond sea an appellate jurisdiction in the last resort is vested in the same tribunal."

Having thus taken a brief view of the nature and origin of appeals to the King in Council, we shall now consider the manner in which parties must proceed when they appeal from the decision of a colonial tribunal. In doing this, it will be impossible to trace more than a mere outline of the practice in such cases. It is but recently that regular reports of the proceedings before the Privy Council, sitting as a Court of Appeal, have been given, and the practice is therefore too unsettled to require or to be capable of a very minute exposition.

From the Common Law Court an appeal in the

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(8) 1 Bl. Comm. 231.

nature of a writ of error lies, in the first instance, to the Court of Error in the colony, and from thence to His Majesty in Council. The Colonial Court of Error is usually composed of the governor and council, who decide by the majority. The appeal on writ of error to this Court operates as a stay of execution, but, to have that effect, must in general be brought within fourteen days after judgment, and is admitted only where the principal sum in dispute is of a certain amount, which is fixed in most colonies at 300*l.* sterling. The ulterior appeal to the King in Council, whether from the Common Law Courts or from the Court of Chancery, is obtained upon leave first granted by the governor. This also suspends in either Court the execution, unless the party appealed against will give security to make restitution to the appellant in case of reversal, but on giving such security he is permitted to levy and sell. This ulterior appeal is not allowed in either Court, unless the principal sum (in cases of property) is of a certain amount, fixed in most colonies at 500*l.* sterling; to be ascertained by affidavit, (9) nor is it allowed unless claimed within fourteen

(9) Stokes, 223 to 225. The exception to this rule is there stated to be where the matter "relates to the taking or demanding any duty payable to the King, or any annual rent or other such like matter or thing, where the right in future may be bound." The instructions to the governor, or the charters of justice, generally impose these limits upon the right of appealing, but upon a question on this subject arising in 1717, the Attorney-General Northey reported his opinion as follows:—"And as to the instructions given to the governor, as men-

tioned in the petition, whereby he is restrained from allowing an appeal in any case under the value of 500*l.* sterling, that does only restrain the Governor from granting of appeals under that value, notwithstanding which it is in His Majesty's power, upon a petition, to allow an appeal in cases of any value, where he shall think fit, and such appeals have been often allowed by His Majesty." 2 Chal. Op. 177.

This opinion was quoted by Dr. Lushington to the Lords of the Council, in the case of *Ex parte*

days after the determination in the Court below. (1) The appellant is also required to give security for payment of the sum in dispute, and all costs and damages occasioned by the appeal, and also for due prosecution of (2) the appeal within a year and a day from the date of its allowance by the governor. The appeal being allowed, and the securities duly perfected, the party appellant takes out from the secretary's office in the colony a copy or transcript, duly authenticated, of the several proceedings in the suit, including, of course, the judgment or judgments which form the subject of the appeal. This transcript should be certified under the

*Jacob de Nahon Pariente*, November 24, 1832, and assented to by their lordships. The right of the King in such cases is also expressly reserved in the most recent charters of justice, and in commissions and instructions, and in the Privy Council Bill. See Appendix.

The following cases show, in two instances, some difference of practice from that stated by the preceding authorities, so far at least as respects the authority under which the appeal is granted, and the sum required to warrant the allowance of it:—"All questions relative to the securities to be given in appeals relative to their amount, value, sufficiency, or reception, should be decided by the Court against whose judgment or decree an appeal to His Majesty in Council should be made." Proclamation by the governor of the Mauritius, pursuant to instructions from the Secretary for the Colonies. *Camberton v. Egroignard*, 1 Knapp's Reports, 251.

Order in council, 15th December, 1828, relating to appeals from De-

merara. The application for liberty to appeal was directed to be made to the court of justice in that colony instead of the governor, and the Court was empowered "either to permit the sentence to be carried into execution, the person in whose favour it should be given entering into good and sufficient security for the due performance of such order as His Majesty should make thereon, or to direct the execution of the sentence to be suspended during the appeal, the appellant entering into similar securities, to the satisfaction of the Court, for the prosecution of the appeal, and for payment of all such costs as might be awarded by His Majesty." The former rule had been, as in the other colonies, 500*l.*, to answer costs. *Craig v. Shand*, 1 Knapp, 253.

(1) 2 B. Edw. 356, n.; Stokes, 224; 1 Rep. W. I. C. 44.

(2) In this case the "due prosecution of the appeal" means the lodging of the petition of appeal at the office of the Privy Council.

hand of the proper officer, as containing a correct copy of all the proceedings. And there should be a certificate also from the governor, under the public seal of the colony, authenticating the signature of the former officer, and stating that it belongs to his office to attest such copies. This transcript is usually sent to England by the appellant, but may be brought over by respondent, (3) to be there used by his agent, as occasion may require, for the purposes of the appeal. Its use is to ascertain, in case of dispute, what has been the course of proceedings in the colony, and the Court of Appeal at home considers it as the only authentic source of information on that subject. The appeal is properly to His Majesty in Council; but by the 3 & 4 Wm. 4, c. 41, s. 1, a committee of the Privy Council, called "the Judicial Committee of the Privy Council," is appointed for hearing appeals from the plantations, &c. This committee consists of the President for the time being of His Majesty's Privy Council, the Lord Chancellor, such of the members of the council as shall from time to time hold any of the following offices:—Lord Keeper or First Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the King's Bench, Master of the Rolls, Vice-Chancellor, Lord Chief Justice or Judge of the Common Pleas, Lord Chief Baron or Baron of the Exchequer, Judge of the Prerogative Court, Judge of the Court of Admiralty, Chief Judge in Bankruptcy, and all persons members of the council who shall have been president thereof, or Chancellor of Great Britain, or shall have held any of the above offices. Any two other persons, being members of the council, may be appointed to be members

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(3) *Gordon v. Lowther*, 2 Lord Raym. 1447.

of the committee. No matter can be heard unless in the presence of four members of the committee, and a majority of those present at the hearing must concur in the judgment.

They have no times of meeting fixed by law. Such days are from time to time appointed as may happen to suit the convenience of the court. Supposing an appeal to take its regular course, the first step is to lodge the petition of appeal. This petition contains a mere narrative or abstract of the proceedings below, with a conclusion alleging that the petitioner is aggrieved by the judgment, has obtained leave to appeal from it, has given the usual security, and now prays for its reversal or alteration. Its narrative should be short, for there is no need that such a petition should at all disclose the merits of the case. And it appears to be sufficient simply to state the judgment which forms the subject of appeal, and to show by what court it was pronounced without entering into any history of the previous proceedings. The petition is lodged by bringing it into the Privy Council Office, and depositing it with the clerks there, who make a memorandum of the time when it is deposited. The manuscript is not filed in the office, nor even produced there. It remains in the hands of the agent. A regulation of the King in Council requires that the petition, in case of appeals from the colonies, should be lodged within a year and a day from the date of the leave granted by the governor to appeal. (4) If not lodged within that period, the

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(4) *Gordon v. Lowther*, 2 Lord Raym. 1447. This was a case of an action of libel where judgment had been given in the Colonial Court for the defendant upon a

special plea of justification. The case states the rule to be a year, but the practice is now to allow a "year and a day;" and if the petitioner has been prevented by circum-

opposite party is entitled to petition His Majesty to dismiss the appeal. But it is understood that a petition may be lodged, however late, and will save the appeal, provided that no petition to dismiss has been already presented. The agent for the party appealed against, on being apprised that the petition of appeal is lodged (but it does not appear that he is entitled to notice either from the appellant or the council office,) gets his name inserted in a book, kept at the office for that purpose, as appearing for the respondent, and at the same time obtains an office copy of the petition. The petition of appeal in the mean time is laid before His Majesty in Council, and an order is made on the petition, referring the appeal to the Judicial Committee, that they may hear and report their opinion upon the same. The appellant's agent then proceeds to bring in his printed case, which is lodged at the office in the same way as the petition of appeal. It consists of a detailed statement of the proceedings in the court below, or such parts of them as are favourable to the purposes of the appellant, accompanied in general, with a view to the convenience of the court, and the saving of expense, by a joint appendix, containing such parts of the transcript as may be required to be particularly noticed, but are too voluminous to be inserted in the body of

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stances over which he had no control, from entering his appeal within the time limited, the council will, in their discretion, permit the appeal to be entered upon a statement of the causes of the delay, which statement must be verified by affidavit.—*Saubot v. Burnley*, before the Privy Council, Nov. 24, 1832. In that case the petitioner, in coming from Trinidad, had been driven by

America, and there wrecked, had afterwards taken his passage on board a vessel to Cherbourg, that being the first about to proceed to Europe from the place where he then was, and having encountered a very disastrous passage, he was taken ill on his arrival in France, and did not recover in time to come here and lodge the appeal in the time fixed by the practice of the court.

the case itself, and in conclusion, the reasons, or legal grounds of appeal are shortly set forth. No particular forms are observed in these instruments, but the appellant states the facts as they were proved in the court below, argues the law which arises upon them, and cites the legal authority in support of the argument, in such mode as he deems most expedient for the interest of his cause. The respondent's agent also prepares a printed case, and when ready, lodges it in the office, after which the agents exchange cases, that is, deliver to each other a copy of that which each has lodged for his client, by which they mutually receive information of the grounds intended to be relied upon at the hearing. But neither party can obtain at the office a sight of his adversary's case.

The appeal having been referred, and both cases having been lodged and exchanged, the cause is set down on the list to be heard in its turn, (5) and a day is afterwards fixed for the hearing, and as soon as it is so set down and appointed for hearing, a summons issues from the office, giving the parties notice of the day fixed, and ordering them to attend. The messenger of the office serves this summons on the agent of each party. The cause is then heard, and two counsel are allowed to argue on either side; the leading counsel for the appellant having the privilege of a reply. The sentence of their lordships is either general, that the judgment of the court below be confirmed or reversed, or it is special, awarding such a sentence as under all the cir-

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(5) "The Lords of the Appeal Committee of His Majesty's most Honourable Privy Council are pleased to order, that in future appeals the causes shall take precedence according to the order in

which they are ready for hearing, and not, as at present, according to the order in which the first printed case is lodged upon each appeal."—Order issued Saturday 23d February, 1828.



cumstances of the case appears most conformable to justice. And in case of affirmance, but not often in case of reversal, their lordships are in the habit of allowing costs to the successful party. Instances of the latter kind do, however, sometimes occur. When the court awards costs to either party, his account of the costs is sent to a Master in Chancery, by whom it is taxed, and the amount allowed being certified to the clerks of the council, is by them inserted in the order as the costs fixed by the court. This course is adopted because there is at present no officer in this court who has authority to tax costs. The sentence or judgment having been pronounced, is then drawn up in the form of a report to His Majesty in Council of the opinion of the committee on the appeal referred to them. This report is put into the proper form by the clerks of the office, at the direction of their lordships, and is laid before the next Board of Council held by His Majesty. Upon its being read at the board, an order of council is drawn up reciting and approving the report, and giving judgment accordingly, which the governor is directed to carry in all respects into due execution. The order is then delivered from the council office to the agent of the successful party, who sends it out to the colony.

Such is the course of practice where both the appellant and the respondent use due diligence in the progress of the appeal. But in case of remissness in either party, it may be useful to show by what methods his adversary may enforce despatch.

First, if the appellant should for a year and a day, after the date of the order granting leave to appeal, neglect to lodge a petition of appeal, the respondent, as we have seen, may present a petition to His Majesty

in Council, to dismiss the appeal. This being addressed to His Majesty, must of course be laid before the Board of Privy Council, who will make an order referring it to the judicial committee for their opinion. It is then brought before that committee at their next meeting, and usually moved and (if the case should afford any ground of opposition) opposed by counsel. Their lordships then proceed to decide upon it and report their opinion accordingly to His Majesty in Council, in the same manner as on an appeal. (6)

Again, if after a petition of appeal be lodged, the appellant should neglect to bring in his printed case, the respondent may compel him to do so, by lodging his own case; after which he may apply, by petition, to the appeal committee for an order requiring the appellant to bring in his case within a month. This order is served on his agent, and if ineffectual, the respondent may then, on petition, accompanied by an affidavit of the service of the former order, obtain a second order requiring him peremptorily to bring in his case within a fortnight, and containing a notice that on his failure to do so the appeal will be heard *ex parte*.

If, on the other hand, the party appealed against should neglect to appear to the petition of appeal, the appellant having brought in his own case, may obtain, as of course, upon petition, an order for a summons calling on the respondent to appear. This summons being obtained, is according to the terms of the order under the authority of which it is issued, posted or affixed at two conspicuous places in the city, *viz.* the Royal Exchange and Lloyd's Coffee House.

If upon this summons, he does not appear, the ap-

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(6) See *Saubot v. Burnley*, *ante*, 115.

pellant moves the committee (upon an affidavit of affixing,) for an order that the appeal be heard *ex parte*, unless the respondent shall appear within six weeks from the date of the order. If the respondent does not appear according to the terms of this order, the appeal will, on a second affidavit of affixing, be set down for hearing *ex parte*.

If on the other hand the respondent should appear, but neglect to bring in his case, the appellant drives him on, by applying to the committee for an order, directing him to bring in his case within a month. This order is served on the agent, and if ineffectual, the appellant may then, on affidavit of service, obtain by petition, a second order, requiring him peremptorily to bring in his case within a fortnight, and containing a notice that on his failure to do so, the appeal will be heard *ex parte*.

Under such circumstances an appeal often comes on for hearing *ex parte*, viz. either on the part of the appellant or the respondent, without opposition from his adversary. Where it is set down on the part of the appellant only, the court will nevertheless, before they award a reversal, require to be satisfied that the judgment of the court below was wrong; and for that purpose will generally hear the appellant's counsel. But where the appellant does not appear to support the appeal, and the cause is set down on the part of the respondent only, the judgment below is affirmed as of course without argument.

Though a cause has been set down for hearing *ex parte*, still it is competent to the party in default to bring in his case at any time before the appeal actually comes on to be argued. And counsel will then be heard on both sides as in other cases.

But if either party delay bringing in the case till so short a time before the day fixed for the hearing, that the other party has not been able to see it and prepare himself upon it, the delay will be a good ground for applying to the court to postpone the hearing, and to make the party in default pay the costs of the day.

Other varieties of practice are occasionally introduced by a particular state of circumstances. Thus, where a party conceiving himself to be aggrieved by the judgment below, has nevertheless been prevented by accidental causes, and without negligence either on his own part or that of his agents, from applying to the governor of the colony, within the period limited in the particular colony, for leave to appeal to His Majesty in Council, the governor has no jurisdiction after that period to allow the appeal; but His Majesty in Council, from whom the right of appeal itself in all cases emanates, may of course, at his pleasure, relax in any such particular instance, where it may appear equitable to do so, the restrictions to which it is generally subject. So it may happen that a governor improperly refuses to allow an appeal, from some doubt as to its competency or regularity, or from any other cause, where justice required a contrary decision. In all such cases the party aggrieved is of course entitled to apply to His Majesty for redress.(7) A party so situated, therefore, proceeds by lodging in the privy council office *a petition for leave to appeal*, supported by an affidavit disclosing the particular circumstances of the case on which he relies as grounds of exception from the general rule. This petition is laid before His Majesty in Council, and is referred by order to the Appeal Committee for their

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(7) See ante 111, and 1 Chal. Op. 177. *Christian v. Corren*, 1 P. Wms. 329.

opinion, and is argued before them. If their report upon it be favourable, an order in council is drawn up approving and adopting the report, and directing that the aggrieved party be allowed to enter and prosecute an appeal. And, in such cases it is usual, for the convenience of the parties, to order that the security to prosecute the appeal and answer the condemnation money shall be taken, not in the colony, but in this country. The appeal then proceeds as in ordinary cases.

It appears by the preceding explanations, that much of the business of the appeal court consists of *motions* or *petitions*. Some applications, such for example as those for orders for hearing *ex parte*, or to bring in the printed case, are considered as *motions of course*. They are made in form to the committee to whom the appeal is referred, and who by that reference have jurisdiction over these the ordinary incidents of its progress, and they are generally disposed of by the clerks, without being actually brought before their lordships. But any *special motions* or applications for extraordinary relief, require a different mode of proceeding. A petition to His Majesty in Council must be lodged, supported by affidavit of the facts, (as in the cases already noticed of a petition to dismiss, or for leave to appeal,) and this petition is laid before the Board of Council, who, by order, refer it to the Judicial Committee for their opinion. It is then moved and argued by counsel before their lordships of the committee, and their opinion is reported to the Privy Council, and an order made thereon, as in the course of a regular appeal case. This kind of business comes on at each meeting of the committee, and takes precedence of the appeals set down for hearing.



## APPENDIX.

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A LIST of the Colonies now forming part of the British dominions abroad has been given in a former part of this work. They were then enumerated without any reference to the governments into which they were divided. We have now to consider them rather more in detail, and with this view it will be necessary to class them according to the form lately given to their different governments. With a view to the more economical administration of their affairs, some of the colonies formerly independent of each other have been consolidated under one government. This has not been the case with Demerara, Essequibo, and Berbice alone, which, forming in fact but one colony on the northern part of the continent of South America, and being all under the legislative power of the crown, naturally seemed to require but one Governor, but has also been adopted with respect to islands, which have separate Legislative Assemblies of their own. By a commission issued on the 19th December, 1832, to Sir E. J. Murray Macgregor, the colonies of St. Christopher, of Nevis, of Dominica, and of the Virgin Islands, have been added to his government, which had previously extended over Antigua, Montserrat, and Barbuda. Each of these places will have a Lieutenant-Governor, and will retain its House of Assembly, nor will there be any General Assembly for all of them, as was once the case with the Leeward Island government. In the same manner a commission, dated the 13th of February, 1833, has issued to Sir Lionel Smith, constituting him governor of Barbadoes and of St. Vincent, Grenada and Tobago, and these three colonies now for the first time placed under his command will have lieutenant-governors only, but will still retain their separate Houses of Assembly. As these commissions have not been laid on the table of the House of Com-

mons, they have not been accessible to the author, who has therefore been unable to give more than the general outline of the changes they have introduced. It will now be necessary to proceed to the consideration of the different colonies in the order in which they were enumerated in the first part of this work. Each government, and the islands that are submitted to its rule, will be observed upon in succession; and in doing this, a brief notice will be taken of their history and constitution, and of some of the principal laws at present prevailing in them.

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## ANTIGUA.

*Antigua* is one of the Caribbee Islands in the West Indies.

It is upwards of fifty miles in circumference, and contains 59,838 acres of land, of which about 34,000 are appropriated to the growth of sugar and pasturage annexed.

In 1774 the white inhabitants of all ages and sexes were 2590, and the enslaved negroes 37,808.

It is divided into six parishes and eleven districts, and contains six towns and villages; St. John's (the capital,) Parham, Falmouth, Willoughby Bay, Old Road, and James Fort. (1)

### HISTORY AND CONSTITUTION.

This island was discovered in 1493 by Columbus, who named it from a church in Seville, Santa Maria de la Antigua.

As early as 1632 a few English families took up lands there, and began the cultivation of tobacco. Among them was a son of Sir Thomas Warner, (2) whose descendants still possess very considerable property in the island; one of them, Ashton Warner, Esq.

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(1) 1 Edwards, 484, 486.

(2) See the account of Sir Tho-

mas Warner at title "St. Christopher."



having been in 1787 President of the Council and Commander-in-Chief in the absence of the governor. (3)

In the reign of Cha. 1, (1625,) that monarch, by letters-patent under the Great Seal, had granted to James Hay, Earl of Carlisle, and his heirs for ever, Barbadoes and the whole of the Caribbee Islands. But Cha. 2 purchased all the Earl's rights, took all these islands under his more immediate royal protection, and by letters-patent under the Great Seal, bearing date 12th June, in the fifteenth year of his reign (1663), appointed Francis Lord Willoughby of Parham, Captain-General and Chief Governor of Barbados and the rest of the Caribbee Islands. (4)

This island enjoyed a legislative assembly at least as early as 10th April, 1668, this being the date of the first Antigua Act mentioned in the printed collections. And it appears by an Act of 13th April in the same year, that courts of justice existed in the island at the same period.

This island being afterwards subdued in the reign of Cha. 2, by a French force, all the former titles of British subjects to lands therein became forfeited to His Majesty; (5) but the island was afterwards retaken by the English arms, and new grants or confirmations of the forfeited lands were obtained from the crown; in consideration whereof the assembly, by an act of 19th May, 1668, consented to the imposition of the  $4\frac{1}{2}$  per cent. duty on exported produce, payable to the crown for ever, being the same  $4\frac{1}{2}$  per cent. duty to which Barbados and other islands (as before shown) are subject.

In 1672 (6) Antigua, with St. Christopher's, Nevis, and Montserrat (7) (to which the Virgin Islands were afterwards annexed (8)) was consolidated under one

(3) 1 Edwards, 473.

(4) These facts are recited in an Act of Assembly of Nevis, No. 1 of printed collection of those acts. And see title "Barbados."

Lord Willoughby's government is described, in act No. 2 of the same collection, as that "of the Caribbee Leeward Islands in America."

(5) So declared by an act of the island after its restoration to Great Britain. See Acts of Antigua, 19th

May, 1668, and the Laws of Montserrat, No. 4.—3 Rep. W. I. C. 31.

(6) 1 Edwards, 453. In the same year Lord Willoughby was appointed Governor of Barbados, St. Lucia, St. Vincent, and Dominica. Ibid. 412.

(7) See Antigua Act, 22d June, 1705.

(8) Viz. under a commission granted by Cha. 2, to Sir William Stapleton. Edwards, ubi sup. 500.

general government, called "The Leeward Caribbee Island Government," and the Governor whereof was styled "Captain-General of the Leeward Caribbee Islands." His chief seat of residence was Antigua, and the government of each island in his absence was usually administered by a lieutenant-governor, or where no lieutenant-governor was appointed, by the President of the Council. (9) The general government consisted, besides the governor-general, of a general council and general assembly, that passed laws on subjects of common and universal concern relating to the different islands of which it was composed; but each island had, besides, its separate council, and its Legislative Assembly or House of Representatives. (1)

By commission, bearing date 26th October, 1689, in the first year of the reign of William & Mary, the crown authorized the "Governors, Councils, and Assemblies of their Majesty's Leeward Caribbee Islands in America, jointly and severally, to make laws for the public peace, welfare, and good government of the said islands, which said laws were to be, as conveniently might be, agreeable to the laws and statutes of this kingdom, and to be transmitted to His Majesty for his royal approbation or disallowance of them." (2)

In 1692 passed an act (now repealed) "for the administration of justice in this island." (3)

On the 10th March, 1715, an act passed (which has

(9) 1 Edwards, 453.

(1) See the printed edition of the Antigua Acts, vol. 1, pp. 1 to 23. One of the most remarkable of the acts of the Leeward Islands, say the commissioners, (3 Rep. p. 6,) was the act No. 28. "This act established the General Councils and General Assemblies formerly held for the Leeward Islands; securing at the same time to the particular islands their peculiar laws and local jurisdictions. It was provided that five representatives shall be elected from each of the islands, to make general laws. The absence of the representatives of any one island is not to exempt or excuse such island from obedience to the general acts, provided a majority of the whole number was present at the passing of such law."

It appears, however, that this General Assembly passed no law whatever during the long period of ninety-three years, viz. from 1705 to 1798, the different legislative assemblies for the various islands being, however, during this time in full operation. In that year it passed a Meliorating Slave Act, which was its last exercise of legislative powers. See also Edwards, ubi sup. 466.

(2) This commission is recited in an order in council transcribed in the Acts of Montserrat, p. 13.

(3) It appears by a previous act of 9th January, 1676, that "Courts of Common Pleas" had long before this time been established at Antigua.

been since altered and amended) "for constituting a Court of Chancery in this island."

On the 21st January, 1791, an act passed (No. 475 of printed collection) intituled, "An Act for establishing Courts of Common Pleas, Error, King's Bench, and Grand Sessions, and for the better regulating and settling due methods for the administration of justice."

The Leeward Island government no longer exists, the islands of which it was composed being now differently combined. In July, 1816, Major-General Ramsay was sent out to Antigua with a commission as captain-general and governor in chief over the Islands of Antigua, Montserrat, and Barbuda, (4) and on 19th December, 1832, by a commission issued to Sir E. J. Murray Macgregor, St. Christopher, Nevis, Dominica, and the Virgin Islands were added to this government, each of the islands enjoying of course (as before) a legislative council and assembly of its own.

No general council or assembly is established over the islands of which this new government is composed.

The Assembly of Antigua settled on General Ramsay a salary of 5000*l.* currency while he should remain within his government. (5)

Mr. Edwards states that the Council consists of twelve members, and the Assembly of twenty-five. (6)

The Judges of Antigua have no salary, but the Chief Justice of the Common Pleas receives some trifling fees. They hold their offices during pleasure. (7)

There is an Attorney-General in this island.

The same persons practise as barristers and as solicitors and attornies. No person can practise who has not been called to the bar in England, or kept a sufficient number of terms to entitle him to be called there. It was formerly otherwise. (8)

#### COURTS.

The courts of Civil Jurisdiction in this island, are the Court of Chancery, the Court of Error, Court of Common Pleas, and Court Merchant, for the benefit of transient persons. The courts of Criminal Jurisdiction for Antigua, are the Court of King's Bench and Grand

(4) See Act of Antigua, 25th July, 1816.

(5) By act of 25 July, 1816.

(6) 1 B. Edw. 487.

(7) 2 Rep. W. I. C. 51, 52.

(8) Ibid. 55. 3 Rep. 26.

Sessions and the Courts of King's Bench and Grand Sessions for the trial of criminal slaves.

*Court of Chancery.*

This court is constituted in the same manner as the Court of Chancery at Barbados and Dominica. It is held whenever applied for as business occurs.

This court, it is said, "exercises jurisdiction in cases of manumission by deed or will, as the Court of Chancery would do as to other interests under deed or will in England, where relief could not be obtained at law."

Members of council, who in this island, it has been seen, are the judges of the Court of Chancery, are sometimes appointed as receivers to estates. The attorney-general said, "they are, and I think it objectionable, they are in the habit of voting upon it, and I think that is not right."—3d Rep. W. I. C. p. 11.

*Court of Appeal and Error*

Is constituted by the act (No. 475,) clauses 155, 177. It is composed of the governor and council. The judges of the court, whose judgment is appealed from, are not allowed to give any vote, but may attend and assign reasons in support of the judgment. The governor and council decide by a majority. No time is limited for bringing a writ of error, but it is no supersedeas to an execution, unless lodged in the secretary's offices within fourteen days after judgment. Before the writ of error is sued out, the plaintiff in error gives security to answer such charges as shall be awarded by the court, in case the first judgment be affirmed, appeals are not very frequent, and the expenses in the island are said to be very inconsiderable. (9)

*Court of Common Pleas.*

This court is composed in the same manner in Antigua as in the other islands, and is held by appointment of the act, (No. 475,) on the first Tuesday in the months of April, May, June, July and August.—3d Rep., p. 12.

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(9) 2 Rep. W. I. C. 186, 189. 3 Rep. 13.

*Court of Complaints.*

Actions are brought in this Court for debts not exceeding ten pounds currency. It is considered as a branch of the Common Pleas, and is constituted by the same act, No. 475.—3d Rep. W. I. C. p. 13.

*Court of Ordinary.*

This Court derives its authority from the King's commission to the Governor, who is sole judge. The Ordinary has the power of collating to benefices, granting licences for marriages, probates of wills, and letters of administration. "Neither the acts of the island, nor the Royal Instructions," said the attorney-general, "make any mention of an appeal from his decisions, but an order in council might, I should think, under particular circumstances, be obtained for allowing an appeal to the King in Council."—3d Rep. W. I. C. p. 13. See ante, Appeals.

*Court of Admiralty.*

The Court of Vice-Admiralty is held by virtue of a commission from the Lords of the Admiralty, or in default of such commission, by appointment of the Governor.

There is no special commission for the trial of offences committed upon the high seas.—3 Rep. W. I. C. 13.

*Court of King's Bench and Grand Sessions.*

The judges of this Court are the Lieutenant-Governor of the island, all the members of Council, the judges of the Court of Common Pleas, the Barons of the Exchequer, and all the justices of the peace of the island.—3 Rep. W. I. C. p. 13; 2 Rep. 51.

The commission of the chief justice does not extend to the criminal courts; he takes precedence there "*next to the members of council.*" The Court is held twice a year.

It has never been the practice in this island for the attorney-general to file informations *ex officio*.

The president of the court sums up the "evidence, and other judges also occasionally offer their sentiments

to the jury upon particular cases." Points of law arising in the course of their proceedings are determined by the opinion of the majority of the judges.—3 Rep. p. 14.

The presiding judge in every court in this island is paid by fees. The chief justice has no salary. The fees received by the chief justice, upon an average of ten years, do not exceed 200*l.* sterling per annum. The tenure of the office of the judges is during pleasure. It is not required that they should be barristers, or have gone through any previous course of legal study, as a qualification for the office.—3 Rep. W. I. C. p. 26.

Besides His Majesty's Attorney and Solicitor, several other members of the bar have been admitted to the rank of King's Counsel in this island. Persons admitted to the bar in the Court of Common Pleas practise afterwards as a matter of course in all the courts. No one is now entitled to admission who has not been called to the bar in England, or kept a sufficient number of terms to entitle himself to be called. This qualification was formerly unnecessary. All barristers in this island act also as solicitors and attornies. The business is not sufficiently lucrative to allow of separate practice.—3 Rep. W. I. C. 26 ; 2 Rep. 55.

#### JUSTICES OF THE PEACE.

The duties of a justice of the peace in this island are, according to the answers of Mr. Lee, represented by the commissioners as very accurate, "to hear and investigate crimes and offences of all kinds, whether committed by whites, free people of colour, or slaves, to commit the parties in felonies ; to bind over whites and free persons in recognizances to the grand sessions in misdemeanors, and with respect to slaves, to punish them for offences within the benefit of clergy, as well as to commit them for trial, in offences which are excluded from the benefit of clergy. Magistrates also exercise jurisdiction over slaves in murder, rape, and burglary, and act in a variety of cases according to the laws of the island."

Information is invariably received upon oath, except with regard to slaves, and then never. (2)

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(2) As to the jurisdiction of justices of the peace in matters relating to slaves, see ante, p. 62, 63, n.

## CORONER.

There is one coroner in the Island of Antigua who is allowed a salary from the public treasury of the island of 600*l.* currency. No qualification by estate or personal property is required in a person who acts as coroner. The coroner in this island is guided in the performance of his duties by certain local laws. The amelioration act provides for and regulates the taking inquests in cases of slaves.-- 3 Rep. W. I. C. p. 27.

## COLLECTION OF LAWS.

There are three volumes of the Laws of Antigua printed and published in London, by authority of the colonial legislature. They consist of the Acts of the Leeward Islands, commencing 8th November, 1690, and ending 21st April, 1798; and the Acts of Antigua, commencing 10th April, 1668, and commencing up to 13th June, 1817. (3)

## GENERAL LAWS OF THE COLONY. (4)

An act of the Leeward Islands of the 7th of June, 1705, intituled "An Act to settle General Councils and General Assemblies for the Caribbee Islands in America, and to secure to each particular Island their own peculiar Laws and Legal Customs," recites that there was at that time a General Council, and a General Assembly for the Leeward Caribbee Islands in America, met together at Nevis concerning the public affairs, and to consult and enact "such good and wholesome laws as may be for the safety and advantage of all the said islands, and that the interests in point of trade and laws of most of the said islands in some respects differ the one from the other, therefore the better to preserve and defend the whole, and to secure to each particular island its own laws and legal customs which are not of a general concern," the act proceeds to provide "that all the laws and legal customs

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(3) 3 Rep. W. I. C. 6. They have been further continued since the date of the Commissioners' Report. See Howard's Laws, 441.

(4) See the remarks in the 1st chapter on the general topic how far the colonies are subject to the law of the mother country.

now in force in each and every the Caribbee Leeward Islands, and respecting only the circumstances of the same, be and remain in their full force and virtue." The next section asserts the right of the General Council and Assembly to make laws for all the Caribbee islands.

Another act of the General Assembly of the Leeward Islands, of which Antigua then formed a part, dated the 20th of June, 1705, and intituled "An Act for preventing tedious and chargeable Lawsuits, and for declaring the Rights of particular Tenants," recites that lawsuits and controversies frequently arise between the inhabitants of these islands, principally occasioned by the different nature and circumstances of their estates from those in England, whereby it sometimes had happened, through the partiality of some and ignorance of others, that contradictory judgments had been given in cases founded on the same rules and principles of law and reason; for the redressing of which mischiefs, and establishing a constant and certain uniformity in the proceedings of the courts of the several islands under this government, the act proceeds to declare "that the Common Law of England, as far as it stands unaltered by any written laws of these islands, or some of them, confirmed by your Majesty or some of your royal predecessors in council, or by some act or acts of Parliament of the kingdom of England extending to these islands, is in force in each of these your Majesty's Leeward Caribbee Islands, and is the certain rule whereby the rights and properties of your Majesty's good subjects inhabiting these islands are and ought to be determined, and that all customs or pretended customs or usages contradictory thereunto are illegal, null and void."

The Attorney-General of Antigua, on his examination under the late Commission for Inquiry into the Administration of Justice in the West Indies, after noticing this act, thus expresses himself:—"It is the more generally received opinion in this island that all acts of parliament of the mother country passed previously to the establishment of the colony, are in force here; but I have never myself given an unqualified assent to this position. I have always entertained a doubt as to the extension of the penal statutes of the mother country, in consequence of a distinction I had



observed to have been taken in the case of *Dawes v. Painter*, 1 Freeman's Rep. 175. I have, therefore, since I have acted as a law officer of the crown, felt myself conscientiously bound on all occasions to allow the prisoner the benefit of this doubt; and as far as slaves are concerned, their condition at the time of the establishment of the colonies was so totally different from what it now is, the powers of the master were then comparatively so undefined and unlimited, that there could have been no one reason, as I conceive, for the adoption of the penal statutes of the mother country towards them." (5)

## BARBUDA.

Barbuda is a small island, 20 miles in length and 10 in breadth, and the inhabitants are somewhat more than 1500 in number. The coast is dangerous, but there is a good road for shipping. The interior is level, and the soil fertile. The chief trade of the colonists consists of the sale of cattle, corn, and provisions to the neighbouring islands. Turtle are found on the shore, and the woods contain deer and several kinds of game. The air is of such purity that invalids resort hither from the other parts of the West Indies for the recovery of health. Barbuda was first settled by a party of colonists from St. Christopher's, led by Sir Thomas Warner. The settlers were at first harassed by the Charaibs of Dominica, and compelled to desert the isle, but they soon afterwards returned, and have never since quitted the place. The whole of the island is the property of the Codrington family. 4 Edw. 230, 5th edit. As this island is a mere dependency of Antigua, it has no courts of its own, nor any particular laws, but would seem to be subject in every respect to the government of Antigua.

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(5) 2d Rep. W. I. C. p. 61.

## DOMINICA.

*Dominica* is one of the Caribbee Islands in the West Indies. It is twenty-nine miles in length, and may be reckoned sixteen miles in breadth. It contains 186,436 acres of land, and is divided into ten parishes, (6) St. John, St. George, St. Andrew, St. Patrick, St. Peter, St. Paul, St. Mark, St. Luke, St. David, and St. Joseph. (7) The capital of the island is the town of Roseau. (8)

### HISTORY AND CONSTITUTION.

Dominica was discovered by Columbus on the 3d of November, 1493, and was so named from its being discovered on a Sunday.

It was included with St. Vincent and other islands in a patent granted to James Hay, Earl of Carlisle, in the first year of Charles 1. (9)

In 1672, King Charles, by commission, appointed Lord Willoughby governor of Barbados, St. Lucia, St. Vincent, and Dominica, (1) but it does not appear that Dominica was ever in the actual occupation of Great Britain under that commission.

By the treaty of Aix-la-Chapelle in 1748, the English abandoned their pretensions to this island, and Dominica, with St. Vincent, St. Lucia, and Tobago, was declared neutral. (2) It surrendered to the British arms in 1759, and by the Treaty of Paris, signed the 10th of February 1763, the former pretensions of England were re-established, and Dominica, St. Vincent, and Tobago were assigned to Great Britain, in full and perpetual sovereignty. (3) By royal proclamation of the 7th of October, 1763, it was declared that His Majesty had granted letters-patent, creating within the countries ceded by the Treaty of Paris, four distinct governments, one of which was to be "the government of Grenada, comprehending

(6) 1 B. Edw. 442.

(7) Proclamation for regulating the election of the Assembly, 21st of June, 1775.

(8) 2 Rep. W. I. C. 27.

(9) 1 Edw. 407. See this pa-

tent more fully noticed at title "Barbados."

(1) 1 Edw. 411.

(2) Ibid. 408.

(3) See this article of the treaty in Loft's Reports, p. 660.

the island of that name, together with the Grenadines and the islands of Dominica, St. Vincent, and Tobago," and had directed the governors of such governments that as soon as the state and circumstances of the said colonies should admit thereof, they should, with advice and consent of their councils, call general assemblies, and should, with consent of the councils and assemblies, make laws, "as near as may be agreeable to the laws of England," and under such regulations and restrictions as used in other colonies, and had also given power to the governors to erect, with advice of the councils, courts of justice for determining causes "as near as may be agreeable to the laws of England."

By letters patent, bearing date the 9th of April, 1764, General Melvill was appointed governor of Grenada, the Grenadines, Dominica, St. Vincent, and Tobago, with power by advice and consent of his council, as soon as the situation and circumstances of the islands would admit, to summon general assemblies to make laws "not repugnant, but, as near as might be, agreeable to the laws and statutes of Great Britain." (4)

A separate Legislative Assembly was, in pursuance of these authorities, convened in each of the islands, constituting the general government. The assembly of Dominica was convened as early as the 16th of June, 1768, that being the date of the first act in the second table prefixed to Mr. Gloster's collection. (5) Prior to the holding of this assembly the island was governed by the ordinances of Governor Melvill and his General Council, chosen from the different ceded islands. (6)

By the act just mentioned an ordinance of Governor Melvill and his council, for establishing Courts of Common Pleas and Error was revived, continued, and amended. This and several other acts passed for establishing and regulating courts of justice prior to the court act of 1803, are all repealed or have expired. (7)

(4) This proclamation and the letters patent are stated in substance in the report of *Campbell v. Hall*, Cowp. 204, when the question of the levying of the four and a half per cent. duties on these islands was discussed and decided. See ante, n. 3, p. 51.

(5) In this collection the date as-

signed to each act is that of its proclamation by the Provost-Marshal. See the Preface, lxviii.

(6) 1st table prefixed to Mr. Gloster's Collection.

(7) 2d table prefixed to Mr. Gloster's Collection.

In 1771 His Majesty, at the solicitation of the legislature of this island, erected the same into a separate and independent government, dissolving thereby its connection with that of Grenada, and appointed Sir William Young, Bart., governor-in-chief over the said Island of Dominica and its dependencies. (8)

On or about the 5th October, 1774, an act passed for establishing a Court of Chancery, the governor or commander-in-chief having been till this period sole Chancellor. (9)

By proclamation 21 June, 1775, His Majesty declared that he had signified his disallowance of "an ordinance made at Grenada by the governor in chief and general council of the southern Caribbee Islands, intituled, 'An Ordinance for establishing an Assembly in the Island of Dominica, and regulating the election thereof;'" (1) and that he was desirous that a full and complete legislature should be established within Dominica, upon a permanent and lasting foundation." And the proclamation proceeded to direct the issue of writs for the election of representatives for the different towns and parishes; that these representatives should consist of nineteen, and that no business should be transacted unless there should be present when such business was proposed or brought on nine members at least. It also fixed the qualifications of the electors and the members, and contained various other regulations. (2)

In September, 1778, this island was invaded and conquered by a French force, and remained in the possession of France till January, 1783, when it was restored to the dominion of Great Britain under the general pacification which then took place. (3) During the French occupation the Assembly had been still allowed to exercise its functions, and had passed several acts. But it seems that the validity of these was afterwards doubted in the island. (4)

(8) See Dominica Act, 3d of October, 1771, intituled "An Act for providing a Salary for his Excellency Sir W. Young,"<sup>7</sup> As to the present government of Dominica see ante.

(9) See the Act of the 22d of July, 1778, reciting that of 1774, and declaring it to be in force.

(1) This ordinance, therefore, it would seem, had been hitherto the authority (subordinate to that of the

proclamation of October, 1763) under which the Assembly of Dominica had been summoned. Its date is not mentioned, but it must have been one of Governor Melvill's.

(2) This proclamation will be found prefixed to Mr. Gloster's Collection of Acts.

(3) 1 Edwards, 435, 441,

(4) Preface to Gloster's Collection, lii, liii.

In 1784 Sir John Orde, Bart. was appointed governor, and called a new Assembly. (5)

On the 5th May, 1803, an act passed, intituled "An Act for establishing and regulating the proceedings in the Courts of Common Pleas, King's Bench, Error, and Grand Sessions of the Peace for the Island of Dominica, and also for repealing an act intituled 'An Act for establishing Courts of Common Pleas, Error, King's Bench, and Grand Sessions of the Peace, commonly called the Court Act.'" This act is said by Mr. Gloster to be still in force, and to be that under which the judicature of the island was at the period of his work regulated. (6)

Since the restoration of the island to the British crown, in 1783, this island has continued to be governed as before, under a Governor, Council and Assembly.

"The governor's salary," says Mr. Edwards, "exclusive of his fees of office, is £1300 sterling, payable out of the 4½ per cent. duties. Whether he has any addition from the Colonial Assembly I am not informed." (7)

It appears, however, on examining the acts, that on the 3d October, 1771, the legislature granted to governor Sir W. Young, and his successors, £2000 currency per annum during his actual residence in the colony; and on 22d June, 1816, granted to Governor Maxwell, while resident, the like sum, in addition to the salary settled by the former act.

The Council consists of twelve members, and the Assembly of nineteen, of whom nine are a quorum. (8)

"The chief justice is appointed from England. He has a salary of nominally £600 sterling per annum, but nets about £550. He has also a colonial salary of what is called £1500 currency, but annually subjected (9) to diminution by the legislature. He has also fees incidental to his office that may amount to £300 or £400 a year currency. The other justices get trifling fees and no other emolu-

(5) Preface to Gloster's Collection, lii.

(6) And it appears by 2d Report W. I. C. 30, to have been in force at the period to which that report refers, viz. 1823.

(7) 1 Edwards, 441, (note.)

(8) 1 Edwards 441. Proclamation as to Elections, cited sup.

(9) 2d Report W. I. C. 43, 51. The word used in the report, p. 51, is "subjected," but it is reasonable to suppose that this is a misprint for "subject," the salary perhaps being voted every year, and therefore of course being annually liable to reduction.

ments whatever. They are appointed by the governor. All the judges hold their offices during pleasure."

"The Attorney-General is appointed from home, but has a salary of £300 per annum provided by the colony." (1)

The qualification of barristers and attornies (whose characters are united in the same persons) is provided for by the Court Act, which enacts "that no person shall be admitted to practise the law in this island (2) until he shall have proved to the satisfaction of the Justices of the Court of Common Pleas, that he hath been admitted a barrister in England or Ireland, or hath kept such a number of terms at one of the Inns of Court in England, as would have entitled him to be called to the bar there, or hath been regularly admitted and sworn an attorney of one of His Majesty's Courts at Westminster, or hath practised as a barrister in any of His Majesty's colonies in America for the space of five years at the least, or hath been bound by contract in writing to serve as a clerk for five years to a barrister or attorney in this island, and caused an affidavit to be made and placed in the secretary's office of the due execution of such contract, within three months next after the date thereof, and shall during the whole time and term of service continue actually employed by a barrister or attorney in the proper business, practice, and employment of an attorney."

#### COLLECTION OF LAWS.

An edition of the laws, including all acts from the earliest establishment of the legislature, to October, 1818, has been published by the Chief Justice, Mr. Gloster. And by an act of the island of 9th October, 1818, it is provided, "that the compilation of the Laws of Dominica made by the Chief Justice, and printed and published at Roseau in this colony by William F. Steward, printer, in this present year of our Lord 1818, be adjudged, deemed and taken as a good lawful statute book of this island with regard to the laws therein inserted, and be admitted as evidence thereof in all courts of judicature therein or elsewhere."

(1) 2d Report W. I. C. 43.

(2) This extends to giving advice or

drawing conveyances for fee or reward. See the same act.

## GENERAL LAWS OF THE COLONY.(3)

The laws in force in this island are its own acts of assembly, and so much (it is conceived) of the common and statute law of England adapted to the circumstances of the colony as existed prior to the proclamation of 7th October, 1763, and such acts of Parliament passed since, as are expressly declared or manifestly intended to apply to the island, or to the colonies in general.(4)

On his examination under the late commission for inquiry into the administration of justice in the West Indies, the Chief Justice of Dominica thus expresses himself on this subject:—

“The common law, as far as applicable to circumstances and colonial situation, is generally followed. The acts of the mother country antecedent to the colonial establishment, comprising the common law, are in force also. Many English statutes are adopted and deemed in operation which passed before the cession of the island, and all statutes of England which affect us locally.”(5)

The Attorney-General observes, “the rule upon this subject is so vague and so little understood in the colonies, that decisions founded upon it will be often contradictory.”(6)

## COURTS FOR THE ADMINISTRATION OF JUSTICE.

The courts of civil jurisdiction established in this island are—the Court of Chancery, the Court of Common Pleas, the Court of Complaints, the Court of Error, the Court of Admiralty, and the Court Merchant. Although cl. 11 of No. 2 speaks of judges or barons of the Exchequer, there is no Exchequer Court in Dominica.

“The crown,” said the Chief Justice, “can sue for and recover its debts in all the regular courts already existing.” The courts of criminal jurisdiction are—the Court of King’s Bench and Grand Sessions of the Peace.

(3) See the remarks in the first chapter on the general topic how far the colonies are subject to the law of the mother country.

(4) See the remarks, *sup.* on the

general law of St. Vincent, which seems to be exactly in *pari casu* with Dominica in this respect.

(5) 2 Rep. W. I. C. 61.

(6) *Ibid.*

*Court of Chancery.*

The Court of Chancery, as at present constituted, was established by an act of the island, No. 14, Laws of Dominica. It is composed, as at Barbados, of the governor, associated with the members of council, *three* of whom, together with the commander-in-chief, are necessary to form a court. They are supposed to have the same jurisdiction as the High Court of Chancery in England.—2 Rep. W. I. C. 34.

Appeals lie to his Majesty in Council, on the usual terms of the appellant giving bond in £500, with two sureties, conditioned to prosecute the appeal within a year and a day, which bond is lodged in Chancery. The Chief Justice conceived there was no restriction from appealing from *all* interlocutory orders as well as final decrees. The court below decides on “the appealability of the matter.” The effect of the appeal is, it is conceived, to put a complete stop to all proceedings in the colonial Chancery.—2 Rep. W. I. C. 35.

*Court of Common Pleas.*

The constitution and practice of this Court resemble, but with considerable improvement, those of the supreme civil court in other islands. The establishment of the court is larger, consisting of a chief justice and four other judges, with the usual officers. The court is held in Roseau on the first Monday in March, April, May, June, and July, and may be continued and adjourned at the discretion of the judges.—2 Rep. W. I. C. 37.

The pleadings and practice obtaining in this island appear, from the answers received, to follow with tolerable exactness those of the courts of England.—2 Rep. 38.

*Complaint Court.*

A Court of Complaints, similarly constituted to those in the other islands, is established in Dominica for the recovery of debts to the amount of £25, which the Chief Justice considers “quite high enough.” Some difference of opinion prevailed as to debts not exceeding £6 12s. 8*d.*, which are recoverable under the Petty Debt Act, and the Attorney-General conceived in no other way. The Chief Justice considered *this* court as possessing a concurrent jurisdiction.—2 Rep. 40.



*Court of Ordinary.*

In the Court of Ordinary the governor sits, alone and unassisted, in all cases. There is not any taxing officer in this court.

All original wills and testaments, after probate, are lodged in the secretary's office, and are never suffered to be taken away, copies duly authenticated being always delivered.—2 Rep. W. I. C. 40.

*Court of Vice-Admiralty.*

The Court of Admiralty has all the jurisdiction of the Instance Court in England; it is, besides, authorized by acts of parliament to try seizures, or penalties incurred by breach of the laws of trade, navigation and revenue.

The chief justice is sole judge. His authority is from the governor, under his seal at arms to be "*his* deputy and surrogate in the Court of Vice-Admiralty in this island." Pirates, and other such offenders, are sent to Antigua for trial.—2 Rep. W. I. C. 40.

*Court Merchant.*

This Court is revived and regulated by No. 74, Laws of Dominica, passed in 1817.

By cl. 13 of the expired act for constituting a court merchant, it is made a court of record; and by cl. 14 the process and proceedings are to be conformable to the process and proceedings of the Court of Common Pleas.—2 Rep. W. I. C. 40.

*Court of Appeal and Error.*

The Governor and *five* of the Council form this Court, which receives appeals from the Common Pleas, as does the Common Pleas from the Complaint Court. The justices of the Common Pleas are expressly prohibited from sitting in this court. There is no limitation of time for bringing appeals from the Common Law Court to the Court of Error. The Chief Justice considers the regulated *amount* for which "appeals may be brought, both from the Common Pleas to the Court of Error, and from thence to the King in Council, as much too high."—2 Rep. 41.

*Court of Grand Sessions.*

The judges of this court are, the lieutenant-governor, (not being commander-in-chief), the members of council, the speaker, and all the justices of the peace, who are members of the House of Assembly. The chief justice however presides in this court, and the other judges very seldom interfere.

The court assembles twice annually. Any three justices of the court (being members of council), may at any time take bail, as is done by the Court of King's Bench in England in term time, or by the justices thereof in vacation.

During the absence at any time of the chief justice, the bench frequently refers any legal point either arising or brought before them, to the attorney-general.—2 Rep. W. I. C. 42.

No record is made up as in England, but the proceedings are entered in a book, not however including the pleadings. The prosecutor's expenses are not paid, nor the defendants.—2 Rep. 41.

As to the appointment of the chief justice and attorney-general, see ante, 137, 138.

## MONTSERRAT.

*Montserrat* is one of the Caribbee Islands in the West Indies.

It is about three leagues in length, and as many in breadth, and is supposed to contain about 30,000 acres of land, about two thirds of which are very mountainous or very barren. (7) It bears the cedar, the cypress, the iron-tree, and other woods, and has the same general character of soil that is observable in the other Caribbee Islands.

### HISTORY AND CONSTITUTION.

Montserrat was discovered at the same time with St. Christopher's by Columbus, in consequence of a supposed resemblance between it and a mountain in Spain that was so denominated, from whom it received its name. The Spaniards, however, made no settlement on the island. Like Nevis, it was first planted by a small colony from St. Christopher's. This was detached in 1632 from the adventurers under Warner. (8)

The Council consists of six members, and the Assembly of eight, two from each of the four districts into which the island is divided. (9) The island is under the government of the Governor of Antigua, and the duties of governor are generally performed by the president of the council. (1)

### COURTS.

The several courts in the island are a Court of Chancery established by the act marked No. 185 of their printed laws, amended by the act marked No. 222; (2) a Court of King's Bench and Common Pleas; a Court of Error, established by the act marked 89; a Court of Vice-Admiralty, a Court of Complaints for the recovery of small debts, and a Court Merchant for transient traders, and for criminal matters there was a Court of Grand Sessions. (3) The President of the Council, in the absence of the Governor, of course presides in the Court of Chancery. The chief justice is not a lawyer, but a resident gentleman of fortune. The attorney-

(7) 1 Edw. 497.

(8) 1 Edwards, 496. As to Warner, see title St. Christopher.

(9) 1 Edw. 498.

(1) 3 Rep. W. I. C. 34.

(2) Id. 33, 34, 35.

(3) Id. ib.

general is also a private gentleman. They act without salary or other advantages derived from their situation, and they all reported their opinions to the commissioners in favour of a change in the mode of administering justice in the island. (4)

COLLECTION OF LAWS.

The laws of the island are contained in one printed and two manuscript volumes in folio. The manuscript acts are very numerous. (5)

This island possessed a legislative council and assembly, at least as early as 1668, that being the date of the first act in its printed collection of laws.

That act, which is intituled "An Act declaring the former grant of the duty of four and a half per cent. lost and null within this island, &c." recites, that during the late war between Charles II., the French King, and the Netherlands, His Majesty lost several of his islands in the West Indies, being subdued by the French, assisted by the Indians, "and amongst others, this island also being lost as aforesaid, thereby all the constitutions of government lands, and grants for lands, were also destroyed, together with the grant for duty of four and a half per cent., which was formerly settled in this place." (6) The act proceeds thus, "that the said former custom, import, or duty of four and a half per cent. is to all intents and purposes become void and null, and also any act and thing concerning the same by reason of the conquest aforesaid. And the same is hereby declared null and void accordingly."

Then follows in the same year an act, intituled "An Act for new granting and confirming the duty or custom of four and a half per cent." After reciting that, "by reason of late conquests obtained by the French King on all the inhabitants of this His Majesty's island, all manner of civil governments, the several constitutions, grants,

(4) 3 Rep. W. I. C. 33.

(5) Id. ib.

(6) A tradition is mentioned as existing in the island, that the old grant was wilfully destroyed by the servants of the British crown, and that the loss of it at the conquest of the island by the French was a mere pretence; the ground of the alleged fraud being that the old grant limited

the application of the four and a half per cent. revenues to the purposes of the local government. The West India Commissioners (3 Rep. 31) state and discredit this piece of traditional history. The ministers of Charles II. however obtained a grant which was accompanied with no such restriction.

and particular properties of all his said Majesty's subjects were destroyed and lost within this his said island," it enacts "that from and after the date thereof, a new impost or custom of four and a half per cent. shall be paid out of all the commodities of the growth of this island, which shall be exported out of this island by every such transporter, unto the use of His Majesty King Charles, &c., his heirs and successors for ever. And the same is and shall be hereby confirmed on His Majesty, his heirs and successors, in as full and ample manner as ever the same was heretofore paid, granted, and confirmed in Barbados, or any other of his said Majesty's islands, &c."

By a subsequent act in the same year, it is stated that the island having been "fully subdued notwithstanding all resistance possible was made by the inhabitants," all proprietors of lands are declared to have lost the same to his Majesty by reason of the French conquest, and also by reason of the same island having been afterwards re-settled and restored by several ships and forces belonging to his said Majesty King Charles the Second, &c."

And then follows another act, also in the same year, enacting "that all and every of the late proprietors of land in this island are hereby re-invested in all and singular their plantations, lands, immunities and appurtenances which lately they enjoyed, and the same to hold, occupy, enjoy, and possess, to him and them, his and their heirs, executors, administrators and assigns for ever, and that they shall and may, when reasonably desired, have the same so confirmed by patent under the great seal of Barbados and the rest of the Caribbee Islands for that purpose by his said Majesty appointed," with the exception of certain lands in the act particularly specified.

In the same year passed an act "for the speedy erecting and building of a place for the Court of Judicature, now or hereafter to be erected in this island," &c.

In 1672 (7) Montserrat, Antigua, St. Christopher's, and Nevis, (8) (to which the Virgin Islands were afterwards annexed,) (9) were consolidated under one general go-

(7) 1 Edw. 453. In the same year Lord Willoughby was appointed governor of Barbados, St. Lucia, St. Vincent, and Dominica. *Ibid.* 411.

(8) See Antigua Act, 22d June, 1705.

(9) Under a commission granted by Charles 2 to Sir W. Stapleton. *Edw. ubi. sup.* 501.

vernment, called "The Leeward Caribbee Island Government," and the governor whereof was styled "Captain-General of the Leeward Caribbee Islands."

The general government consisted, besides the governor-general, of a general council and general assembly, who passed laws on subjects of common and universal concern relating to the different islands of which it was composed. (1)

This island was invaded by a French force in 1712, (2) and taken, but was restored to Great Britain under the treaty of Utrecht, concluded on or about 31st March, 1713.

It was again invaded and captured by the French in 1782.

On the 28th December, 1782, passed an act (No. 217) reciting that in consequence of the capture of that island by His Majesty's arms, doubts had arisen as to the validity of the several suits and process then depending in the Courts of Chancery, Error, King's Bench, and Common Pleas of the said island, and particularly whether the said suits and process can be carried on in the same manner as if this island had still continued under the subjection of the Crown of Great Britain. And the said act provides that all suits, &c. depending in the said courts at the time of the capture by His Majesty's arms on the 22d February last, shall be revived and made valid, and restored to the same plight and condition as at the time of the capture by His Majesty. "And the several plaintiffs at law and in equity, in such suits are hereby fully authorized and empowered to proceed to final judgments and decrees thereupon, or otherwise, according to the nature of their respective suits, and likewise to all subsequent process, in the same manner as if the said island had not been captured, but still continued under the subjection of His Britannic Majesty aforesaid," &c.

This island was finally ceded to Great Britain under the general pacification which took place in 1783. (3) An act similar to the foregoing was then passed, (dated 27th April, 1784, No. 225,) which, after reciting that doubts had arisen as to the validity of suits depending at the time

(1) See ante Antigua. See printed edit. of Antigua acts, vol. 1, p. 1 to 23.

(2) 1 B. Edw. 497.

(3) Ibid.

of the restitution of the island by the French King to His Majesty, declared such suits to be valid, &c.

On the said 27th April, 1784, passed an act (No. 226), intituled "An Act for confirming and establishing several Acts passed by the Legislature of this Island during the government thereof under the French King," which recites, "that doubts had arisen as to the force and validity of the several acts passed by the legislature of the said island during the government thereof under the French King, and that it was highly proper for the ease and benefit of his Majesty's subjects in the said island that several acts, from which his Majesty's subjects had derived great advantage, passed by the legislature of the said island during the government thereof by the French King, should be confirmed and restored to the same state, condition, force and effect in which they were at the time of the restitution of this island to His Majesty." And the act proceeds to provide "that all and every the following acts passed by the legislature of this island during the government thereof under the French King, that is to say, an act made and passed the 19th day of September, 1783, intituled 'An Act to alter, amend and explain certain parts of an act intituled An Act for establishing a Court of King's Bench and Common Pleas and a Court of Error, and for the more speedy execution of justice, and for collecting certain fines and penalties on the officers taking other fees than allowed in a docket settled by his excellency by advice of his council,' and one other act made and passed on the same day, intituled 'An Act to alter, amend and explain an act intituled An Act for constituting a Court of Chancery to be held in and for this island,' the force of which, in consequence of the late restitution of the said island to your Majesty may have abated or been rendered of no effect, shall be and are hereby revived, confirmed and made valid to all intents, constructions and purposes whatsoever," &c.

One of the acts of assembly of this island is too curious to be passed over without notice. It recites, in an Eastern style of metaphor, that opprobrious language, "if not prevented, may overshadow the good government and administration of justice in this island with the staple clouds of reproach and infamy," and it then proceeds to prohibit such language generally, and the following nick-

names in particular :—“Tory—English—or Irish—or Scotch Dog,” &c.(4)

#### COURTS.

The commissioners state that it is not in their power to enumerate the courts of judicature in this island, no answers having been received to the questions addressed by them to the chief justice and the resident crown lawyer.—3 Rep. W. I. C. 33.

#### *Court of Chancery.*

A Court of Chancery appears to have been constituted by No. 185 of the Laws of Montserrat, and amended by No. 222.

By the former act the Governor or president, and five members of the council, compose a court.

By No. 222, in case of the Governor or president being a party to a suit, the next senior member of council is appointed to preside; and for want of five disinterested persons to act as judges, three or four members of council are allowed (with the commander-in-chief) to form a court.

#### *Court of King's Bench and Common Pleas.*

The act of the island, No. 89, creates a Court of King's Bench and Common Pleas, with an establishment of one chief justice and four assistant judges, “to try causes according to the laws and usage of Great Britain, and the laws and usage of the island.”—3 Rep. W. I. C. 34.

#### *Other Courts.*

A Court Merchant for transient traders was established so late as the year 1800.

There is also a Court of Vice-Admiralty, and it seems under clause 8 of the Court Act, a Court of Complaints in this island, or at least a jurisdiction for the recovery of small debts.

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(4) 3 Rep. W. I. C. 31.



*Court of Grand Sessions.*

This court was established under an act of the island, No. 86, which act however provides only for *one* gaol delivery in the year.—2 Rep. W. I. C. 35.

By the act constituting the Court of Sessions, all magistrates are required to attend.

*Justices of the Peace.*

Justices exercise a summary jurisdiction in civil matters in this island, in all cases where the debt does not exceed £10; appeals to a higher tribunal are allowed where the sum exceeds £3 currency.

The only case in which the practice of granting search warrants in this island differs from the proceedings in England is in the mode of searching negro houses for stolen goods, when no warrant is necessary, but the master, mistress or overseer of the plantation must be present.

A prisoner when acquitted is instantly set at large—the fee is charged to the public; the expense of prosecutions is borne by the country, but persons found guilty of assaults pay for the prosecution.

Justices have jurisdiction in disputes as to seamen's wages.—3 Rep. W. I. C. 37.

Inquests on white and free people are taken as in England; on slaves, as the Melioration Act prescribes.

Information of sudden or violent deaths is received from the owner, attorney or manager; never in this island from the slaves.—3 Rep. W. I. C. 38.

## NEVIS.

*Nevis* is one of the Caribbee Islands in the West Indies.

It is nothing more than a single mountain, the circumference of the base of which does not exceed eight English leagues.

It is divided into five parishes. Its seat of government is Charles Town, and there are two other shipping places called Indian-Castle and New-Castle.

The number of white inhabitants at the period of Mr. Edward's work is stated at about 600, and the *negroes* are said to be about 10,000. (1)

### HISTORY AND CONSTITUTION.

The English first established themselves in this island in the year 1628, under the protection and encouragement of Sir Thomas Warner. (2)

It is said that in 1640 it possessed 4000 whites. (3)

This island possessed a legislative council and assembly at least as early as 1664, which is the date of the first act in its printed collection of laws.

That act, which is intituled "An Act for settling an impost on the commodities of the growth of this island," recites that Cha. 1, did by letters-patent under the great seal of England, grant and convey unto James, Earl of Carlisle, and his heirs for ever, the property of that Island of Nevis; and that Cha. 2, had by purchase invested himself in all the rights of the said earl, (4) and in all other rights which any person might claim from that patent or any other, and thereby more immediately had taken that island and the rest of the Caribbee Islands into his royal protec-

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(1) 1 B. Edw. 468 to 470.

(2) 1 B. Edwards, 470. See title "St. Christopher," for an account of Sir T. Warner.

The senior King's Counsel at Nevis, examined under Mr. Dwar-

ris's commission, speaks of 1625 as the date of the "first settlement of the colony."—2d Rep. W. I. C. 62.

(3) 1 B. Edwards, 471.

(4) See this transaction explained at title "Barbados."

tion, and had by letters-patent under the great seal of England, bearing date 12th June, in the fifteenth year of his reign, appointed Francis, Lord Willoughby of Parham, Captain-General and Chief Governor of Barbados and the rest of the Caribbee Islands, (5) with full power and authority to grant, confirm, and assure to the inhabitants of the same and their heirs for ever, all lands, tenements, and hereditaments under His Majesty's seal appointed for Barbados and the rest of the Caribbee Islands. The act then recites that by virtue of the said earl's patent divers governors and agents had been sent over thither with authority to convey in parcels the land within the islands to such persons as they should think fit, which had been performed; but many had lost their grants, &c.; and that an acknowledgment of twenty pounds of tobacco per pole, and other taxes had been raised by the island to the Earl of Carlisle, which had been held very heavy. The act then proceeds to provide that all the now rightful possessors of lands might repair to his excellency for a full confirmation of their estates and tenures under the public seal of the island, and also that the payments of the twenty pounds of tobacco per pole, and all other duties due to His Majesty in right of the earl, shall cease; and that the inhabitants shall hold their plantations to them and their heirs for ever in free and common socage at the rent of one ear of Indian corn. And in consideration of such extinguishment of duties and confirmation of lands, the act lays on an impost payable to the crown for ever of  $4\frac{1}{2}$  per cent. on all the exported produce of the island. (6)

In 1672 the Leeward Caribbee Island Government was formed in the manner already related. (7) It may be doubted whether the general legislative assembly of the Leeward Caribbee Islands had any existence till the commission of Wm. 3, in 1689. Its printed acts begin in 1690, and the act which declares the power of the general assembly over these islands is dated in 1705, (see ante, 131.)

By commission, bearing date 26th October, 1689, in the

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(5) "Or of the Caribbee Leeward Islands in America," as it is expressed in the Nevis Act, No. 2.

(6) This impost, as elsewhere ex-

plained, is payable at Barbados and all the Leeward Caribbee Islands. See the different titles.

(7) See ante, Antigua.

first year of his reign, King William 3. authorized "the Governors, Councils, and Assemblies of their Majesty's Leeward Caribbee Islands in America, jointly and severally to make laws for the public peace, welfare, and good government of the said islands, which said laws were to be, as conveniently might be, agreeable to the laws and statutes of this kingdom, and to be transmitted to His Majesty for his royal allowance or disapprobation of them." (8)

An act of 1710 (No. 68 of printed laws of Nevis) mentions courts of justice as having been for some time held in the island; and in 1711 an act (No. 70) passed "for establishing the Courts of Queen's Bench and Common Pleas, and settling due methods for the administration of Justice in this Island." And in May, 1732, an act (No. 94) passed for the like purpose. This, not having expressly repealed the former, they are both contained in the printed collection. (9)

In 1782 Nevis with St. Christopher surrendered to the arms of France; (1) but was restored to Great Britain by the peace of 1783.

The "Leeward Island Government" no longer exists, its component parts having been for some years past separated. The commission under which, till the last year, Nevis was governed, comprised also St. Christopher, Anguilla and the Virgin Islands, but did not embrace Antigua or Montserrat. They are now all consolidated into one government, with a lieutenant-governor to each different island (see ante, 123.)

This newly-constituted general government has not a general council or assembly; but each island enjoys (as before) a council and assembly of its own.

Mr. Edwards states that in the absence of the governor-general the government of this island is administered by the President and Council, and that this board is composed of the president and six other members, and that the House of Assembly consists of fifteen representatives, three for each parish. (2)

The chief justice and assistant judges are said to be

(8) This commission is recited in an Order in Council transcribed in the printed acts of Montserrat, p. 13.

(9) With respect to the Court of Chancery it derives its authority entirely from the King's commission

and instructions to the governor, there being no local law on the subject.—2d Rep. W. I. C. 67.

(1) 1 B. Edwards, 463.

(2) *Ibid.* 470.

appointed by the governor by patent, to continue during pleasure. They have no salaries, and (except the chief justice, whose fees are settled by law,) scarcely any fees. (3)

There is no attorney or solicitor general in this island. Those officers reside at St. Christopher. The chief law officer of the crown is called the senior king's counsel. This gentleman, when examined under the late commission for inquiring into the administration of justice in the West Indies, was asked whether it was requisite that persons acting as counsel in these courts should have been called to the bar in England, and if not, who were admitted to practise and in what manner? his answer was—that "persons who have been called to the bar in England, as a matter of right, as of course, and persons whose competency is made apparent by certificate, or upon motion in open court, by the usage of the courts, are admitted to practise as counsel and solicitors, or attornies, and as advocates and proctors in all the courts respectively, and such admission is considered to confer the same privileges with the same restrictions and controul of the courts as does an admission in the mother country *there*; but I have been able to trace no rule of the court as to these matters. In the Court of King's Bench and Common Pleas in this island however counsel are not privileged to practise as attornies, and do not, there being only four attornies allowed by the Court Act. But the present four attornies have been admitted barristers also; one by special rule of Court." "There is no rule of court as to the qualification of persons to practise as attornies; but the court is satisfied of their ability or competency before admission, which is obtained in like manner as in the case of barristers. They are not limited as to clerks." (4)

#### COLLECTION OF LAWS.

There is an edition of the Acts of the Island from 1664 to 1740 (5) inclusive, with the Acts of the Caribbee Leeward Islands annexed, printed by authority of the lords of the committee of the privy council for trade and plantations. This is scarce.

There is another from 1664 up to 1774, printed by the

(3) 2 Rep. W. I. C. 55 and 3 Rep. 55.

(4) 2d Report, W. I. C. 55.

(5) This should be 1739. It was printed in London by the King's printer in 1740.

authority of the legislature, and made evidence by an act for that purpose, and this is also scarce.

There is a third from 1664 to the middle of 1818, printed by authority of the Council and Assembly; but this is inaccurate, the press not having been properly revised or corrected by regular authority. The acts from May, 1818 were, in 1825, in manuscript only. (6)

#### GENERAL LAW OF THE COLONY. (7)

By an act of the Leeward Islands of 7 June, 1705, intituled "An Act to settle General Councils and General Assemblies for the Caribbee Islands in America, and to secure to each particular Island their own peculiar Laws and legal Customs," it is provided that all the laws and legal customs now in force in each and every of the Caribbee islands and respecting only the circumstances of the same, be and remain in their full force and virtue. (8)

By another act of the Leeward Islands of 20 June, 1705, intituled "An Act for preventing tedious and chargeable Lawsuits, and for declaring the rights of particular tenants," it is *declared* "that the common law of England as far as it stands unaltered, &c. (9) is in force in each of these Islands, and that all customs, &c. contradictory thereunto are illegal, null and void."

Upon the examinations under the late commission for inquiring into the administration of justice in the West Indies, the senior King's counsel of Nevis thus expressed himself:—"The common law of England, unaltered by any written law of the Leeward Islands or this Island, or by some Acts of Parliament extending to the Colonies, is considered the certain rule whereby the rights and properties of the inhabitants are or ought to be determined; and all customs, or pretended customs, or usages contradictory thereunto are illegal, null and void. And all Acts of Parliament of the mother country, *antecedent to a certain period*, and applicable to the colony, or which name the colonies, or are expressed to extend to all His Majesty's dominions, and also Acts of Parliament regulating the practice of the Court of King's Bench, or the Court

(6) 2 Rep. W. I. C. 58.

(7) See the remarks in the first chapter on the general topic how far the colonies are subject to the law of

the mother country.

(8) See title "Antigua," where the recitals of this act are given.

(9) See ante, Antigua.

of Common Pleas, passed prior to the Court Act, anno, 1732, are considered as operative in this island. But that *certain period* does not appear to have been settled by any judicial decision that I have met with on record here. By the 25th clause of the Court Act, whereby the Statute of Frauds of 29 Car. 2, is extended to this Island, it appears that Acts of Parliament of that date, 29 Car. 2, were considered inoperative here. But at how much earlier a date I do not find, possibly soon after the final settlement of the colony in 1625, or the early part of the seventeenth century."—2 Rep. W. I. C. 62.

In the case of *Campbell v. Hall*, Howell's State Trials, vol. 20, p. 289, Lord Mansfield is reported to have said, "It is absurd that in the colonies they should carry all the laws of England with them. They carry such only as are applicable to their situation. I remember it has been determined in the council. There was a question whether the statute of Charitable Uses operated on the Island of *Nevis*. It was determined it did not; and no laws but such as were applicable to their condition unless expressly enacted."

Of the Laws of Nevis the principal are these:—

No. 33, cl. 1, enacts that the coroner shall execute his office pursuant and according to the laws and statutes of England.

No. 100. The Court Act of this island, intituled An Act for establishing the Courts of King's Bench and Common Pleas, &c. &c. with such powers as the judges of the two courts at Westminster respectively have or exercise, subject, nevertheless, to such jurisdiction, power, &c. as the Court of King's Bench, at Westminster, hath usually had over all other courts in his Majesty's dominions.(1)

No. 135. An Act for holding a Court of Sessions once every year.

Cl. 3. The justices of the Court of King's Bench and Common Pleas are exempted from sitting in this court,

(1) It is said however that appeals go from the Court of King's Bench and Common Pleas to the Court of Error, and thence to the King in Council, notwithstanding the clause of this Court Act, which seems to re-

serve the power of appeal from the Court of King's Bench and Common Pleas in the island to the Court of King's Bench in England.—2 Rep. W. I. C. 186.

which is composed as it is vaguely said of "about three justices of the peace."—3 Rep. W. I. C. 42.

#### COURTS.

The courts for the administration of Civil justice in this island are:—the Court of Chancery, the Court of Ordinary, the Court of Error, the Court of King's Bench and Common Pleas, and the Court of Vice-Admiralty; but the Court of King's Bench and Common Pleas, and the Court of Error only are established by the laws of the island.

The courts for the administration of criminal justice are:—the Court of King's Bench and Common Pleas, the Court of Error, (according to the classification of the King's counsel,) the Court of Session, the Court of Justices of the Peace, the Slave Court, the Courts of Oyer and Terminer and general Gaol Delivery, the Court of Vice Admiralty, and the Commission Court for the trial of pirates. The first five are established by laws of the island; the succeeding three are derived mediately, (*i. e.* through the captain general,) the last immediately from the King.

#### *The Court of Chancery.*

The Court of Chancery in this island derives its authority entirely from the King's authority and instructions to the captain general, there being no local law whatsoever upon the subject.

The captain general is sole chancellor, and holds a court *pro re natâ*.

There is one master in chancery, appointed by the captain general, and he is examiner also. He does not give any security.

Costs in this island are taxed by the Master, who is governed by a docket established upwards of thirty years ago.—3 Rep. W. I. C. 45.

#### *Court of King's Bench and Common Pleas.*

In this court are blended the separate jurisdictions of the Courts of King's Bench and Common Pleas in England.

The court derives its authority from the Court Act, No. 100.—3 Rep. W. I. C. 46.



The writ of *habeas corpus* is obtained in this island both at common law and in favour of liberty, by the Act of Charles 2d; though the legal extension of it to this island is questionable, and its suspension disregarded.—3d Rep. W. I. C. p. 47.

*Court for the Recovery of Small Debts.*

There is no Court of Complaints in this island, but by the 32d clause of the Court Act justices of the Court of King's Bench and Common Pleas have "power to hear and determine in court, without a jury, all manner of actions and suits under the value of 10*l.* current money, or 100*lb.* of sugar;" and likewise "all cases relating to servant's wages and debts due to artificers and labourers, not exceeding 2000*lb.* of sugar, or 15*l.* current money; and in such cases the oaths of the plaintiff shall, if the Court think fit, be sufficient evidence to prove the debt or demand." At the time of passing this act in 1732, accounts were very commonly kept and actions brought and judgment given for so many pounds of sugar, *eo nomine*, which may partly account for the making produce a legal tender to the marshal at sales upon executions, and the practice which has grown out of it.—3 Rep. W. I. C. p. 48.

*Court of Ordinary.*

There is no Court of Ordinary in this island established by law. The captain-general (of St. Christopher, of which Nevis is a dependency,) is sole Ordinary in his government by virtue of the King's commission. He sits when applied to as in the Court of Chancery, but deposes generally the president of the council to grant letters of administration, (but not to decide on a caveat,) probate of wills, and marriage licenses.—3 Rep. W. I. C. 49.

*Court of Vice-Admiralty.*

The Court of Vice-Admiralty derives its ordinary authority and jurisdiction from the commission, (as vice-admiral,) and the instructions to the captain-general; and its powers are the same locally as those of the High Court of Admiralty in England. The Court has also a concurrent jurisdiction with the Courts of Record by virtue of certain acts of Parliament; and by special commission, (of late disused,) it has cognizance of prize causes during war.

*Court of Error.*

In this court the captain-general, or other person administering the government, and four or more members of the council, are the judges.—3 Rep. W. I. C. 49.

The “Criminal jurisdiction” of this island is vested in several courts, *viz.* the King’s Bench side of the Court of King’s Bench and Common Pleas, the Court of Sessions, holden annually on the first Tuesday, Wednesday, or Thursday in October, composed of three justices of the peace at least, one whereof to be of the quorum, who, according to the commission of the peace, are the members of the council only; the Court of Justices of the Peace, consisting of one, two, or more justices, as occasion may require, and as prescribed by the general commission of the peace; and Courts of Oyer and Terminer and General Gaol Delivery, depending upon commissions issued from time to time, upon extraordinary occasions, by the captain-general. These courts are all governed by the laws of the mother country, not being affected in their proceedings or practice by any local act whatsoever. Prosecutions are frequently carried on at the instance of a private prosecutor, who retains whom he pleases in the Court of King’s Bench and Common Pleas, and at the Court of Sessions, but in all the other courts, and in cases termed “public prosecutions,” that is, conducted at the public expense, and noticed by the superior authorities, the senior King’s counsel resident in the island prosecutes, unless the Attorney-General or Solicitor-General, who reside at St. Christopher, are specially called upon, which usually happens in cases of importance or magnitude.—3 Rep. W. I. C. 50.

With the exception of the chancellor, the ordinary, the members of the council, and the commissioners for the trial of pirates, (at the Admiralty sessions,) who are all appointed by the King, all the judges and justices of the several courts are appointed by the captain-general by patents under the great seal. They have no salaries, and (except the Chief Justice of the Court of King’s Bench and Common Pleas, whose fees are settled by law, and the judge of Vice-Admiralty,) scarcely any fees. It was not known that justices had any jurisdiction in civil matters in this island.—3 Rep. W. I. C. 52.

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## ST. CHRISTOPHER AND ANGUILLA.

*St. Christopher* is one of the Caribbee Islands in the West Indies. It lies in 17° 15' north lat. and 63° 17' west longitude. It is about fourteen leagues in circuit, and contains 43,726 acres of land. It is divided into nine parishes, and contains four towns and hamlets, viz. Basseterre (the present capital, as it was previously that of the French) containing about 800 houses, Sandy Point, Old Road, and Deep Bay. (1) When Bryan Edwards wrote, the number of white inhabitants was computed at 4000, and taxes were levied on 26,000 negroes, and there were about 300 blacks and mulattoes of free condition. (2)

*Anguilla* is an Island sixty miles north west of St. Christopher. (3) It is now said to be a dependency of the latter island, and to send one member to its assembly. But in the continuation of Mr. Edwards's book it was said that "Anguilla has an assembly of its own, and even a chief, who is always chosen by the islanders, though he is confirmed in his office by the Governor of Antigua." (4) It is in length more than nine, and in breadth less than three leagues. It was settled by the English in 1650.

## HISTORY AND CONSTITUTION.

St. Christopher's was discovered in November, 1493, by Columbus himself, who gave it his own Christian name. But it was neither planted nor possessed by the Spaniards. It is the eldest of all the British Colonies in the West Indies, and, indeed, the common mother both of the English and French settlements in the Caribbee Islands. Mr. Thomas Warner, with fourteen other persons, sailed from England and arrived at St. Christopher's in January, 1623, and by the month

(1) 1 B. Edwards, 462 to 467.

(2) *Ib.* 467.

(3) Brooke's Gazetteer.

(4) 4 B. Edwards, 217.

of September following had raised a good crop of tobacco. The first actual establishment in Barbados did not take place till the latter end of 1624. (5)

The English found the Charaibes in possession, and with them they continued to live for some time on amicable terms.

In May, 1624, a ship of James Hay, Earl of Carlisle, arrived in the colony, having been sent out there at the solicitation of Warner, with necessaries for the new settlers,

In 1625 a party of French adventurers landed in the island and were well received by the English, and shortly afterwards the settlers of both nations fell upon the Charaibes, destroyed great numbers of them, and drove the rest from the island. (6)

In the first year of Cha. 1, (1625,) that monarch, by letters-patent under the Great Seal, granted to James Hay, Earl of Carlisle, and his heirs for ever, the whole of the Caribbee Islands. (7)

In 1626 Warner was knighted, and through the interest of Lord Carlisle sent out from England as Governor of St. Christopher's; and in 1627 a treaty of partition took place between the English and French commanders, by which they agreed to divide the island in nearly equal parts between their respective followers. (8)

In 1629, a Spanish force invaded St. Christopher's, expelled both French and English, laid waste the settlements, and reduced the country to a desert. The two latter nations, however, were afterwards restored to their possessions in this island. (9)

In the reign of Cha. 2, that monarch purchased all the rights of the Earl of Carlisle, and took the whole of the islands granted to the earl more immediately under his royal protection. And by letters-patent under the great seal, bearing date 12th June, in the fifteenth year of his reign, (1663,) appointed Francis Lord Willoughby, of Parham, Captain-General and Chief Governor of Barbados and the rest of the Caribbee Islands. (1)

(5) 1 B. Edwards, 454, 455.

(6) *Ibid.* 457.

(7) See Nevis Act, No. 1 of printed collection. And see title Barbados, where this matter is more fully stated.

(8) 1 B. Edwards, 458, 459.

(9) *Ibid.* 182, 183, 459.

(1) Nevis Act, No. 1, printed collection, and titles "Barbados," where this matter is more fully stated.

In 1666 the English planters were driven out by the French, but obtained restitution by the treaty of Breda in 1667. (2)

In 1689 the English were again expelled by their French neighbours, who remained about eight months in exclusive possession, but were themselves in turn reduced by the English under the command of General Codrington. (3)

St. Christopher's enjoyed a legislative assembly at least as early as 31st August, 1694, for by an act of the Leeward Islands of that date, (4) it incidentally appears that each of the islands of which the general government was composed possessed at that time a Council and Assembly. This appears to have been secured to them by the commission granted by Wm. 3, and dated 20th October, 1689, by which the Governors, Councils, and Assemblies of the Leeward Caribbee Islands were authorized "jointly and severally to make laws for the public peace, welfare, and good government of the said islands." Before the year 1704 the English appear to have conquered that part of St. Christopher's, which had formerly been in possession of the French, for in that year Mr. Attorney-General Northey reported with regard to "that part of St. Christopher's lately gained by conquest from the French," that "Her Majesty may, if she shall be so pleased, under her great seal of England, direct and command the duty of 4½ per cent. to be levied on goods exported from the conquered part, Her Majesty by her prerogative being enabled to make laws that will bind places obtained by conquest." (5)

In 1711 an act was passed in St. Christopher's (No. 1 of printed collection) intituled, "An Act for the establishing of Courts and settling due methods for the administration of justice in this island. (6)

(2) Act of St. Christopher's, No. 38, cl. 5, of printed collection, 1 Edwards, 460.

(3) Act of St. Christopher's, No. 38, cl. 1, of printed collection, 1 Edwards, 461.

(4) Among the acts of the Leeward Islands annexed to the printed acts of St. Christopher's.

(5) 1 Chal. Op. 141.

(6) "This act was repealed by another passed in 1724, (No. 59.) But several objections arising to that act it was not confirmed, but ordered to lie by probationary. Therefore both acts are printed." Note in margin of the printed collection.

It is the act of 1724, (No. 59,) however, which is considered in St. Kitt's as the existing Court Act. 2

On 13th November in the same year, an act passed intituled, "An Act for preserving the Freedom of Elections, and appointing who shall be deemed Freeholders and be capable of electing or being elected Representatives." (7)

By the peace of Utrecht, concluded on or about the 31st March, 1713, this island was ceded wholly to the English, and the French possessions were afterwards publicly sold for the benefit of the English government. Some few of the French planters, however, who consented to take the oaths, were naturalized and permitted to retain their estates. (8)

In 1727 an act of St. Christopher's (No. 68) passed, to subject all goods, the growth of the late French part of the island, to the payment of the  $4\frac{1}{2}$  per cent. duty, which the act recites to have been laid on the Leeward Islands generally, by "An Act of the General Council and General Assembly of the Leeward Caribbee Islands in America, called or known by the names of Nevis, St. Christopher's, Antigua and Montserrat, made in or about the year 1663, and entitled an Act for settling an Impost on the Commodities of the growth of the Leeward Caribbee Islands."

In the same year (1727) an act of St. Christopher's (No. 71) passed, intituled "An Act to enable the several parts of this Island, formerly belonging to the French, to choose and send Representatives to serve in the Assemblies of this Island; to declare and ascertain the Number of Representatives for the whole Island, what number each Parish shall elect, and the several qualifications of the Electors and Candidates; to secure the Freedom of Elections, and for repealing an Act of this Island, dated the 13th day of November, 1711, intituled "An Act for preserving the Freedom of Elections and appointing who shall be deemed Freeholders, and be capable of electing or being elected Representatives."

In 1782 St. Christopher's was invaded and captured by

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Rep. W. I. C. 52, 58, 186. The Court of *Chancery* in this island does not derive its authority under either of these acts, but only under the Governor's commission. *Ibid.* 52 to 66.

(7) Mentioned and repealed by No. 71 of printed acts.

(8) See Act of St. Christopher's, No. 71, 1 Edwards, 461, 462.

a French force; but it was restored to Great Britain under the general pacification in 1783.(9)

Mr. Edwards states that "in St. Christopher's the Council should consist of ten members; but it is seldom that more than seven are present. The House of Assembly is composed of twenty-four representatives, of whom fifteen make a quorum. The requisite qualification is a freehold of forty acres of land, or a house worth £40 a year. Of the electors the qualification is a freehold of £10 a year.(1)

The appointment of the chief justice is generally considered to belong to the government at home. The four assistant judges are appointed by the Governor, and hold commissions from him under the great seal of the government. The chief justice and his assistants all hold their commissions during pleasure. They have no salaries, but receive certain fees.(2)

There is an attorney-general in this island.

It is not required that persons acting as counsel in the courts of this island should have been called to the bar in England. By a law lately passed, it is required that they should have kept twelve terms at least, in some of the inns of court, with the exception of those persons who were attending the offices of barristers, with the view of being called to the bar.(3) Persons admitted to the bar are, by a law of this island, allowed to act also as solicitors and attornies.

#### COLLECTION OF LAWS.

The Acts of this island from 1711 to 1799 have been printed.(4) Those from 1711 to 1740 were printed in London by the King's printer, and by order of the Lords' Commissioners of Trade and Plantations; and to that volume are annexed the Acts of the Caribbee Leeward Islands, from 1690 to 1730.

The Governor said he "could not supply the commissioners with a copy of the laws; he had none for himself; he was obliged to grope in the dark." A copy of the printed laws to 1779 was afterwards with difficulty pro-

(9) 1 Edwards, 462.

(1) 1 B. Edwards, 466. And see the Election Act, No. 71, cl. ii.

(2) 2d Report, W. I. C. 52.

(3) 2d Report, W. I. C. 55. The number of terms necessary is afterwards stated (p. 56) to be nine.

(4) 2d Report, 58.

cured; but many of the laws of this island remain in manuscript.—3d Report, W. I. C. 58.

GENERAL LAW OF THE COLONY. (5)

By an act of the Leeward Islands of 7th June, 1705, intituled "An Act to settle General Councils and General Assemblies for the Caribbee Islands in America, and to secure to each particular Island their own peculiar Laws and legal Customs," it is provided that all the laws and legal customs now in force in each and every of the Caribbee Leeward Islands, and respecting only the circumstances of the same, be and remain in their full force and virtue." (6) The general Assembly is, however, by the fourth section of the same act, to have power to make acts binding on all the Leeward Caribbee Islands. By another act of the 20th June of the same year the common law is declared to be in force in the Leeward Caribbee Islands, (see ante, Antigua.)

By the Court Act (No. 1), passed in 1711, it is enacted, that in this island shall be held a court, &c., and that the justices shall determine causes with full power and jurisdiction "according to the laws and customs of England, and according to the laws and customs of this island, &c. And the Court Act (No. 59), passed in 1724, appoints a Court of King's Bench and Common Pleas, the justices whereof are authorized "to hear, try and determine in the said court, according to the laws and usages of the realm of Great Britain, and the laws and usage of the said island," &c.

Upon the examination under the late commission for inquiring into the administration of justice in the West Indies the attorney general of St. Christopher says, "We consider the law of England operative here, in cases applicable to our circumstances, except where it may be modified or altered by the acts of the colonial legislature. We also consider Acts of Parliament, passed previous to the cession of the island to Queen Anne by the Treaty of Utrecht, operative here, in all cases in which they are applicable." (7)

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(5) See the remarks in the first chapter, on the general topic how far the colonies are subject to the law of the mother country.

(6) See title "Antigua," where the recitals of this and the next act are given.

(7) 2d Report, W. I. C. 61.



No. 280. An Act for establishing a Court of Sessions of the Peace, to be held in and for this Island.—3d Report, p. 61.

14th June, 1820. An Act for amending the Act for establishing a Court of Sessions of the Peace, to be held in and for this Island.

26th June, 1820. An Act to alter so much of the Court Act as relates to the admission of Barristers.

Cl. 3. Any person desirous of being admitted, shall produce a certificate, or proof on oath, of his admission to the bar at Westminster, or that he has regularly kept terms at one of the Inns of Court in London for the space of three years. This regulation not to affect those, being whites, who are now in offices in St. Christopher.—3d Rep. W. I. C. p. 63.

#### COURTS OF JUSTICE.

The Courts established in this island for the administration of civil justice are, the Court of Chancery, Court of King's Bench and Common Pleas, Court of Vice-Admiralty, Court of Ordinary, and Court of Error, also an occasional Court Merchant.

The courts established for the administration of criminal justice are, the criminal side of the Court of King's Bench and Common Pleas, the Court of Quarter Sessions, and the Court of Special Sessions. Commissions of Oyer and Terminer also issue under the great seal.

#### *Court of Chancery.*

The Governor in this island is sole Chancellor, "as holding the great seal of the colony," said the Attorney-General. The Chancellor exercises the same authority as the Chancellor does in the High Court of Chancery in England, except in matters of bankruptcy. The court is said to be guided by the laws, principles, and decisions which govern the Courts of Equity in England.—3d Rep. W. I. C. p. 64.

An appeal lies from an interlocutory order as well as from final decrees. But the appeal has no effect in staying the proceedings of the court here, if security be given for restitution in the event of the success of the appellant.—3d Rep. 65.

*Court of King's Bench and Common Pleas.*

This court derives its authority from an Act of the island, No. 59, and comprehends in general all such criminal and civil matters as are the subject of the jurisdiction of the Court of King's Bench and Common Pleas in England.

Real actions are never brought in this court, except dower, *unde nihil habet*; ejectments are frequent. Slaves are recovered by action of detinue.

The owner of fifteen acres of land, or of ten slaves, or of a house in any of the towns of the island, of the value of £10 current money by the year, is exempted from arrest.

The writ of *habeas corpus* is obtainable in this island. Under the statute it is granted by the judges; and the Attorney-General thinks correctly.—3d Rep. W. I. C. p. 66.

Actions entered in the Court of King's Bench and Common Pleas for sums under £10 are denominated complaints. Such actions are tried by the justices of the Court of Kings Bench and Common Pleas without a jury, at the monthly sittings of that court.

*Court of Ordinary.*

This court is held under the authority of the Governor's commission; the Governor, or in his absence from the government, the temporary commander-in-chief, being sole judge.

Wills respecting real and personal property are proved here, when the testator dies and the will is in the colony. If a testator die in England and his will is proved there, an exemplification or probate is recorded in the office of the registrar in ordinary.—3d Rep. W. I. C. p. 68.

*Court of Vice-Admiralty.*

The judge of this court (the chief justice) derives his authority by commission under the seal of the High Court of Admiralty in England, with power to determine those civil maritime cases over which the Instance Court exercises jurisdiction.

Proceedings for the recovery of seamen's wages are in-

stituted, but not frequently, as the expense would be too great for the subject-matter.

By statute 46 Geo. 3, c. 54, piracy and other offences, committed in places where the admiral has jurisdiction, are directed to be tried in the colonies according to the laws of England, under commissions to issue as therein mentioned. "No such commission," said the Attorney-General, "has been sent to this island, and there is no jurisdiction for the trial of pirates in this island."

#### *Court of Error.*

It is considered in this island that writs of error may be brought from the court of common law to the Governor in Council for any sum, notwithstanding His Majesty's instructions have fixed the amount at £300; the Court Act, in clause 35, speaking generally of "any judgment given by the Court of King's Bench and Common Pleas for any sum, matter, cause or thing," without reference to the instructions, whereas in the 38th clause respecting appeals to the King in Council, the amount in that case limited by the instructions is adverted to.

#### *Escheats.*

There is no Escheat Court or escheator in this island; there is a person holding a commission as Casual Receiver, whose duty is considered to be to take the direction of property falling to the Crown by escheat, or for default of kindred, and to dispose of it for the advantage of the Crown.—3d Rep. p. 69.

#### *Criminal Prosecutions.*

Criminal prosecutions of every description are entertained in this island by the Court of King's Bench and Common Pleas. Offenders are generally prosecuted by the Attorney-General at the suit of the Crown. A prosecution is commonly instituted by laying a bill before the grand jury; sometimes, but very rarely, by criminal information. The indictments are generally drawn by the Attorney-General. The fee is paid by the public.

The grand jury, if desirous of advice, apply to the court, who generally refer to the attorney or solicitor general, if the judges have any difficulty as to the point inquired of.—3d Rep. W. I. C. 70.

*Quarter Sessions.*

In this court the senior justice of the peace acts as chairman, when there is no member of Council present. The matters usually occupying the court are indictments for breaches of the peace, nuisances, non-repair of roads, &c., and the election of waywardens and constables. Counsel practise in this court.

The Attorney-General has the indictment prepared, and usually conducts the prosecution, but it may be put into the hands of other counsel.

The expenses of prosecutions in this court are generally borne by the public.

A record of the proceedings is kept by the Colonial Secretary, who in this court acts as clerk of the peace, and takes the costs.—3d Rep. W. I. C. p. 70.

*Judges and Justices.*

The judges in St. Christopher's are selected as in the other islands, from the first class of the community. It is not necessary that any of them should be barristers, or should have gone through a course of previous legal study.

Justices of the peace have no jurisdiction concerning disputes as to seamen's wages. (8) Justices of the peace of this island have not been in the habit of visiting the jail; the senior magistrate is not clear as to their right to do so; the marshal being a public officer appointed by the crown, is perhaps under the controul of the Court of King's Bench only.—3d Rep. 76.

*Coroner.*

There are *four* coroners in this island, appointed and removable by the Governor or his *locum tenens*. The coroner is allowed £5, current money of the island for every inquest he holds. The coroner is guided in his duty by the rules which govern coroners in England.—3d Rep. W. I. C. p. 77.

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(8) These disputes will now be tried in the Vice-Admiralty Courts, see *ante*, 79.

## VIRGIN ISLANDS.

### HISTORY AND CONSTITUTION.

THESE islands were not peopled by the English till about 1666. They were separated into two divisions.

In the first division of those possessed by the English, Tortola is the principal, to which division also belong Jost Van Dykes and Little Van Dykes, and Guana Isle, with Beef and Thatch Islands.

In the second division is Virgin Gorda, called also Great Virgin and Spanish Town, having two good harbours. To this island belongs Anageda or the Drowned Island, Nicker, Prickly Pear, and Mosquito Islands, the Cammanoes, Scrub, and Dog Islands, the Fallen City (two rocky islets close together, at a distance resembling ruins,) the Round Rock, Ginger, Cooper's Salt Island, Peter's Island, and the Dead Chest. (1)

Tortola is about eighteen miles long from east to west, and seven in its greatest breadth. It was first settled by a party of Dutch Buccaneers. These, in 1666, were driven out by others, who took possession in the name of the King of England. Protection being afforded them, Tortola was soon afterwards annexed to the Government of the Leeward Islands. (2) The first Assembly met on the 1st February, 1774, under a proclamation dated 30th November, 1773, issued in consequence of a petition from the inhabitants, who, in consideration of being allowed a House of Assembly, had promised to grant an impost of  $4\frac{1}{2}$  per cent. "similar to that which was paid in the other Leeward Islands." That grant was the first act of their legislature. (3)

#### TORTOLA.

On application for a copy of the laws, the commissioners learnt with surprise, that in this island all the laws

(1) Walker's Gazetteer, 4th edit.

(3) 1 B. Edw. 460, 461.

(2) Ibid.

remained in manuscript, and were, as might be expected, many of them in an imperfect state.—3d Rep. W. I. C. p. 81.

#### COURTS.

The courts established in the Virgin Islands for the administration of civil justice are, the Court of Chancery, the Court of Common Pleas, and the Court of Error. The courts established in the Virgin Islands for the administration of criminal justice are, the Court of King's Bench and Grand Sessions of the Peace. There is no Court of Exchequer in this island.

#### *Court of Chancery.*

Courts of Chancery for this island are usually held at St. Christopher's. A court is only held at Tortola when the Governor visits this part of his government, and then for no precise time, but so long as his Excellency may think proper, from the nature of the business to be done. There is a manuscript volume of the rules of practice in this court, shewing only some slight variations with respect to time, &c. from the practice of the High Court of Chancery in England.—3 Rep. W. I. C. p. 81. There never was within this island at the same time, more than one Master in Chancery, until within a month before the arrival of the commissioners, when a Master in Chancery *extra* was appointed at the particular solicitation of the master. There is not, in general, more business than can be transacted by one master. The masters receive no salaries, but are paid by fees; they give no security. An appeal to the King in Council may be made from the Chancellor's decision, interlocutory as well as final. It has, it is said, the effect of staying the proceedings, and when made from interlocutory orders may occasion great delay. Costs are "frequently" taxed in this court by the master.

There is a table of fees established in this court by a former Chancellor. The fees of this court have always been regulated by the authority of the Chancellor.

#### *Court of Common Pleas.*

The Court of Common Pleas derives its authority from an Act of Assembly passed in 1783. It has the same ju-

risdiction as that of the Court of Common Pleas in England, and follows as nearly as possible the practice of that court. The court generally sits two, three, or four days in the months of April, May, and June, respectively, in the month of July probably a day or two more, and the August court is generally continued for every eight or ten days, until the end of September, and sometimes as late as October.

Actions are commenced by filing not only a declaration but a copy of an account, bond, note, bill, &c., and process is served by leaving these documents at the defendant's last place of abode, with an indorsement naming the plaintiff and defendant, and setting forth the cause of action, damages, &c. A person who has never been in the island cannot be sued unless he has a power of attorney upon record. The Court Act gives the power of arrest. A person not a freeholder may be arrested for any sum of money, but if for a sum under £20 the person arrested may be discharged on his swearing that he is an inhabitant, and that he does not intend to depart from these islands, and on his entering a common appearance.

Bail must be given for all sums above £20, but a person possessing ten acres of land, &c. is exempt from arrest.—2 Rep. W. I. C. p. 118, and 3 Rep. 82.

The writ of execution is the same as in the other islands. Free persons of colour can sue and be sued in this court; are competent witnesses; are not admitted as jurors; are by law excluded from the House of Assembly; are not subject to any penalties from which a white person is exempted; and are "subject to no other disabilities than such as exclude them from all public situations and offices." An appeal lies from this court to the Court of Error, where the sum in dispute exceeds £300, but in order to suspend execution it must be brought within fourteen days after judgment.

#### *Complaint Court.*

Small debts under £20 are denominated complaints, and are recoverable in this court. The costs do not exceed the sum of £1. 16s. 3d. up to execution, and suits are in general speedily decided.

#### *Court of Ordinary.*

This court derives its authority from His Majesty's

commission to the captain-general, who appoints his deputy in this island, to grant probates of wills, letters of administration, and marriage licenses. All wills executed in the Virgin Islands are proved here: after wills have been proved and registered, they are returned to the executor.—3 Rep. W. I. C. p. 83.

The costs of this court are not taxed. There is no process of excommunication, or other effectual mode of punishing contempt in this court. There is no means of obtaining a divorce in this island, nor is there any mode by which a wife can obtain a separate maintenance.

#### *Court of Vice-Admiralty.*

This court derives its authority from the Court of Admiralty in England. It has jurisdiction in matters of prize and revenue. It has one judge, a surrogate. The present surrogate was appointed by the Governor. He holds his office during good behaviour, and is removable by the Governor. The former judge was appointed from England. There is not much business done in the Instance Court. There have been a few instances of proceedings for seamen's wages; they are not attended with much expense, and are said to be very summary.

No Admiralty Sessions are held in this island; persons charged with piracy were formerly carried to Barbados, but will now most probably be taken to Antigua, the chief seat of this government.

#### *Court of Error.*

This court is established by the Court Act. The judges of the Court of Common Pleas are excluded by law from sitting in the Court of Error. The members decide by a majority.—3 Rep. W. I. C. p. 408.

#### *King's Bench and Grand Session.*

This court derives its authority from certain clauses of the Court Act. The judges of this court are, the Lieutenant-Governor, the members of His Majesty's Council, the Justices of the Common Pleas, and the Justices of the Peace. This court is held twice a year, the first Monday in March and the first Monday in September, at the court-house. The King's counsel draws the indictment, and prosecutes offenders in this court.—3 Rep. W. I. C. p. 84.



The president of the court always delivers a charge to the grand jury. When the grand jury are desirous of advice upon points of law, they apply to the King's counsel. There is no court of Quarter Sessions in this island, p. 85.

*Escheats.*

There is no Escheat Court established in these islands. When property has escheated to the crown "that is worth applying for," said the King's counsel, a petition from the parties to His Majesty is forwarded to our agent residing in London; he presents it to the Secretary of State for the Colonies, who submits it to His Majesty. The Secretary of State directs the Governor to issue a writ of inquiry. The Governor sends a writ, directed to certain persons, requiring them to issue a precept to the marshal for impannelling a jury to try the question of escheat or not; they hear the evidence and decide accordingly. The judges report the case to the Governor, who acquaints the minister with the result; and His Majesty has been graciously pleased, in one case, to grant the land petitioned for to the parties petitioning. Cases of intestacy are frequent among the unmarried coloured inhabitants of those islands, and property frequently escheats to the crown for want of heirs.

Slaves escheating are not thereby considered as virtually freed.

Where there are illegitimate children unprovided for, all the property left by the parent is allowed to remain in the possession of the infants' friends, for their sole benefit. No case of this kind has ever been represented at home by petition or otherwise.—3 Rep. W. I. C. p. 87.

LAW OFFICERS.

The Attorney and Solicitor-General for the government reside at St. Christopher's. One crown officer and King's counsel resides and practises in this island.

*Barristers and Attornies.*

It is not required that persons applying to be admitted as counsel in the courts of this island should have been previously called to the bar in England, or have kept a specified number of terms in any inn of court. A certificate signed by the Attorney or Solicitor-General and one practising barrister, attesting their fitness, will enable

them to obtain admission to the bar in the courts of this island. To act as solicitors or attornies in this island, it is not necessary that persons should have previously served any clerkship. The branches of the profession which it is found advantageous to keep distinct and separate in the mother country, are here every where united. In this colony these gentlemen must be admitted as barristers in the common law courts before they are allowed to practise as attornies or solicitors, and after such admission no other formality is required.—3 Rep. W. I. C. p. 91.

#### *Justices of the Peace.*

Informations in this island are always upon oath. Justices of the peace have a summary jurisdiction in a few cases under the police act. Justices have no jurisdiction in civil matters in this island. Justices of the peace have no jurisdiction in disputes relating to seamen's wages, p. 92.

The Court of Chancery for the Virgin Islands being frequently held at St. Christopher's, five members of council, disinterested and indifferent persons, not judges of the court *a quo*, can never be assembled in this island to compose a court of error; and where a writ of error is sued out in the Virgin Islands, it is considered as postponing, *sine die*, the payment of any debt exceeding £300.

#### *Court of Grand Sessions.*

In the criminal court all the judges of the Court of Common Pleas and all justices of the peace named in the commission, compose the Court of Grand Sessions, p. 93.

## BARBADOS.

*Barbados* is one of the Caribbee Islands in the West Indies. It is the most easterly of them, and lies between  $59^{\circ} 50'$  and  $60^{\circ} 2'$  W. long., and  $12^{\circ} 56'$  and  $13^{\circ} 16'$  N. lat. It is supposed to be 25 miles from north to south, and 15 from east to west, and contains about 107,000 acres of land, most of which is under cultivation. (1) It is divided into five districts and 11 parishes, and contains four towns, Bridgetown, (the seat of government), Ostins or Charles Town, St. James's, and Speight's Town. It is now the seat of a government comprising within its jurisdiction Grenada, St. Vincent, and Tobago, each of which, however, retains its separate legislature. (See ante, 123.)

### HISTORY AND CONSTITUTION.

It was probably first discovered by the Portuguese in their voyages from Brazil, and from them it received the name which it still retains. It was found without occupants or claimants. It had been deserted by the Charibes, and the Portuguese, regarding it as of little value, left it in the state as when discovered by them.

Formal possession was afterwards taken of the island by an English vessel, the crew of which landed there in 1605, and on the spot where James Town was afterwards built, set up a cross with this inscription, "James, King of England and this island." (2) In this manner they took formal possession of the place, but made no settlement. Some years afterwards a vessel of Sir William Courteen, a London merchant, accidentally visited the island, and made so favourable a report of it, that the Earl of Marlborough (then Lord Ley) solicited and obtained from James I. a grant of it to himself and his heirs in perpetuity; and William Deane being appointed his gover-

(1) Encyc. Brit. Edwards states the longitude to be  $59^{\circ}$  west from London, and the latitude  $13^{\circ} 10'$  north; the length to be 21 miles, the breadth 14, and the surface 106,470

acres, vol. i. 344; 1 Rep. W. I. C. 57. The island is said to be about 30 miles long and 16 broad.

(2) 1 B. Edw. 317.

nor, arrived there in 1624, and laid the foundations of James Town, which was the first English settlement in the island.(3)

In the first year of Charles I. (1625) James Hay, Earl of Carlisle, either not knowing of the Earl of Marlborough's patent, or disregarding it, obtained letters-patent under the great seal of all the Caribbean Islands, including Barbados, and, after some dispute, Lord Marlborough waived his prior grant in consequence of an annuity of £300, and Lord Carlisle became sole proprietor.(4)

By Lord Carlisle's patent he was empowered "to make such laws as he or his heirs, *with the consent, assent, and approbation of the free inhabitants of the said province, or the greater part of them, thereunto to be called*, in such manner and form as he or they in his or their discretion shall think fit and best." And "to do and perform all and every thing and things which to the fulfilling of justice courts,(5) or manner of proceeding in their tribunal, may or doth belong or appertain, although express mention of them in these presents be not made, yet we have granted full power by virtue of these presents therein to be made, so as, notwithstanding the aforesaid laws be agreeable and not repugnant to reason, nor against it, but as convenient and agreeable as may be to the laws, statutes, customs, and rights of our Kingdom of England." The patent also provides, that every liege subject of the King brought or to be brought within the province, and their children born or to be born there, shall be natives and subjects of His Majesty as free as they that are born in England.(6)

By virtue of this grant it would seem that the proprietary proceeded to appoint a Governor and Council, and (in conformity with its above cited provisions) to call a legislative assembly, and to erect courts of justice. It is certain at least, that a *Governor* and *Assembly* were in existence as early as 13th May, 1646, there being an act of the island under that date passed in the name of those authorities; and there is reason to suppose that some of

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(3) It is commonly considered as having also been the first English settlement in the West Indies, but Edwards shows that St. Christopher came into our possession in 1623.

(4) 1 B. Edw. 320.

(5) The passage stands thus in B. Edwards' work. The words ought perhaps to be, "justice, the course or manner of proceeding in their tribunals."

(6) 1 B. Edw. 321, n. 1.

the acts to be found in the printed statute-book may be referred to a still earlier period.(7)

The grant to Lord Carlisle was afterwards, during his absence from England, revoked, and a new one issued to the Earl of Pembroke, in trust for Sir William Courteen, by the crew of whose vessel the island had been first beneficially possessed; but on Lord Carlisle's return, his influence obtained an annulment of Courteen's grant, and new letters-patents in his own favour again restored him to his former privileges.(8) Under this second patent Sir William Tufton was sent out in 1629 as governor for Lord Carlisle.

During the early part of the troubles in England, the claim of this proprietor, whether disputed in the island, or disregarded amidst the confusions at home, was tacitly relinquished; but in 1646 the then Earl of Carlisle, son and heir of the patentee, brought forward his pretensions. He entered into a treaty with Lord Willoughby of Parham, conveying to him all his rights by law for 21 years, on condition of receiving one-half the profits, and then concurred in soliciting a commission for him as chief governor under the sanction of the royal authority. In thus consenting that his governor should be clothed with the authority derivable from a commission from the King, he was perhaps influenced by the apprehension, that after his title had for some years laid dormant, and the planters had begun to flourish in the absence of his oppressions, they might refuse obedience to his unsupported commands. Whatever might be the motive on which he proceeded, the act itself was plainly at variance with his claims as proprietor.

Under this commission Lord Willoughby arrived at Barbados, and took possession of the government; but soon afterwards the regal authority being abolished in England, the island became subject to the Commonwealth, by whom a new governor was appointed.

(7) See particularly an act reciting, that "divers laws had been made by assent of the governor, council and freeholders out of every parish of this island, intituled a General Assembly for that purpose elected and chosen," &c. Hall's Acts, No. 4. And see ib. No. 1, which provides that "all acts

and statutes made and published in the island, or viewed, corrected and confirmed by any governor and council, or president and council, by virtue of any commission from King James or Charles II., &c. be in full force and virtue."

(8) 1 B. Edw. 322.

On the Restoration Lord Willoughby applied to Charles II. for leave to return as governor, but this was opposed by the inhabitants, who now considered him rather as the representative of the claims of the Carlisle family than as the deputy of the crown, and who were anxious to be placed entirely under the royal government. They insisted that Lord Carlisle's patent was void in law, and their case was referred by Charles to a committee of the Privy Council.

During the discussions before the council an offer having been made by one of the planters to raise a per centage duty on the produce of their estates, on condition that the King should take the sovereignty into his own hands, Charles greedily grasped at the offer; and though the authority of the person who made it was on the very next day denied by the planters,(9) the hope thus raised in the mind of that needy and extravagant monarch, of realizing a revenue of a considerable amount, was not speedily to be relinquished. The council very readily seconded his views; the unfortunate planters had no power to resist; they were threatened with a revival of the claims of the Carlisle family, who assumed to be lords of the soil, and to treat the planters as mere tenants at will; they were refused to be allowed to try in the courts here the validity of the Carlisle patent—every art of cajolery and intimidation was used, and the result was the following compromise. The crown procured a surrender of the Carlisle patent, and engaged to confirm the planters in the legal possession of their estates, in consideration of which the Assembly of Barbados was to grant to the King, his heirs and successors, a permanent and irrevocable revenue of  $4\frac{1}{2}$  per cent. to be paid in specie on all dead commodities, the growth of the island, that should be shipped off the same. Out of this the Crown was to make provision for the Earl of Kinnoul, (1) the representative of the patentee, and to pay off the different creditors, claimants on the profits of the Earl of Carlisle's share of the patent; and the remain-

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(9) 1 B. Edw. 332, 333.

(1) This is still paid out of the  $4\frac{1}{2}$  per cent. fund, under the name of Lord Kinnoul's *pension*, so named "with as much propriety," Mr. Broug-

ham observes, "as the holders of long annuities might be denominated pensioners." Colonial Policy, vol. i. p. 551.

der (subject to the charge of £1200 per annum for the governor's salary) was to be at the disposal of the King. This arrangement was carried into effect. Lord Willoughby was sent out as the King's governor of Barbados and the other Caribbee Islands; (2) and the 4½ per cent. duty was granted by act of the island passed the 12th September, 1663. (3)

A Council having been appointed and an Assembly summoned under the new commission, the Governors, (4) Council and Assembly, by declaration, bearing date the 7th March, 1666, proclaimed "that the government of Barbados should be according to the laws of England and of that island, as had been theretofore used and practised." (5)

Afterwards, by an act of the island, (6) bearing date 22d March, 1666, reciting the declaration of 7th March, "and that nothing more conduces to the good and quiet of any place and people than the assuring and ascertaining such laws and statutes as they are to be governed and regulated by," it was enacted, "that all such acts and statutes as have been made and published in this island as reviewed, corrected and confirmed by any governor and council, or president and council, by virtue of any

(2) He was appointed by letters-patent, bearing date 12th June, 15 Cha. II. See this commission partly recited in the Act of Nevis, No. 1 of printed collection.

(3) 1 B. Edw. 335. Mr. Edwards says, that the planters finding "that no support could be expected from the people at home, whose privileges lay prostrate at the feet of the restored monarch, passed the act required of them, and their posterity still bear, and, it is apprehended, will long continue to bear the burthen of it." It is to be hoped, that the time has now arrived when as the fund is at the disposal of Parliament, an end will be put to an impost that has been as oppressive in its effects, as it was grossly disgraceful in its original exaction. (See ante, 50, 51, notes (3), (4). The act (which is No. 36 of Hall's Acts) makes no mention of the arrangement above referred to, but professes to im-

pose the duty for the maintaining "the honour and dignity of his Majesty's authority—the public meeting of the sessions—the often attendance of the council—the reparation of the forts—the building a sessions-house and a prison, and all other public charges incumbent on the government." But these purposes have been disregarded in practice, and to meet the expenses mentioned, specific taxes in addition to the 4½ per cent. have been levied in the colony. It is said that payment in *specie*, according to the terms of the act, is not now required. Colonial Policy, vol. 1, p. 552; but see ante, p 50, note (3).

(4) Lord Willoughby did not remain long after his arrival, and three persons were appointed to execute his commission. Hall's Acts, p. 3.

(5) See preamble to No. 1, Hall's Acts.

(6) No. 1, Hall's Acts.

commission from King James or Charles I., or by virtue of any commission from his most gracious Majesty that now is, either immediately from either of their said Majesties, or mediately from them or either of them, by, from or under the late Earl or any former Earl of Carlisle, by or with the assent or consent of the representatives of this place legally called and continued, which stands unrepealed by any power and authorities aforesaid, be in full force and virtue in this island, and that all laws, acts and statutes made or published in this island by any other power or authority than as before expressed, are utterly void and of none effect, any declaration, order or ordinance to the contrary, notwithstanding."

By the same act certain commissioners are appointed to compile all the "acts and statutes in force as aforesaid, and to cause them to be inrolled in one book by the secretary of the island." And this, as appears by the return of the commissioners, bearing date 18th July, 1667, was afterwards done; and the acts so compiled by them are at the commencement of the book of printed laws, Hall's Acts, No. 2 to No. 36 inclusive.

Since the commission to Lord Willoughby, in 1663, the island has been constantly governed under commissions granted in like form by letters-patent from the crown, with accompanying instructions to the governors.

From the same period Councils have been regularly appointed, and Representative Assemblies summoned, and by these assemblies, with concurrence of the council and of the governor, laws have been enacted and sent home for the allowance of His Majesty in Council, according to the usual form of constitution in colonies that have legislatures of their own.

In this island the Council is composed of twelve members. The governor sits in council even when the council are sitting in their legislative capacity—a method which in other colonies would be considered as improper and unconstitutional. (7) The Assembly consists of twenty-two, of whom twelve are a quorum. They are elected from the different parishes, and every person electing, or elected, must be a white man professing the Christian religion and a free or naturalized subject of Great Britain,

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(7) 1 B. Edw. 349.



having attained the age of twenty-one. He must also possess a certain qualification in land. (8)

In this island there are an Attorney-General and a Solicitor-General. The former receives a salary of £200 currency per annum, paid by the island; the latter acts gratuitously. (9)

#### LAWS. (1)

The laws in force here are, first, the common law of England; secondly, such Acts of Parliament as were passed before the settlement of the island, and are applicable to its condition.

The bankrupt and poor laws, the laws of police, tithes, and the Mortmain Acts have been treated as not applicable to the condition of the colony, and are therefore not in force in it.—1 Rep. W. I. C. p. 5.

Of acts passed subsequently to its settlement, such only are considered to affect the colony as have the island expressly named or virtually included in them; as is the case where the laws are declared to extend besides Barbados “to the West Indies,” or “to the colonies.” And all navigation acts, and acts of revenue and trade, and acts respecting shipping, are obligatory, though the colonies are not named in them.—1 Rep. W. I. C. p. 5.

#### *Arrests and Underwriting.*

Several acts, numbered 51, 59, 68, 76, in Hall's Laws, and 10 in Moore's Collection, have been passed, regulating the manner of giving tickets out of the secretary's office, so as to enable parties to leave the island. Before the passing of any of these acts, it had been the custom of the island that all residents therein, except married women and children under fourteen, intending to depart thence, were obliged to put up their names publicly in the secretary's office, and within a certain time afterwards, or else upon giving certain securities, they obtained a ticket or licence from the secretary, signed by the governor, as a warrant to the master of the ship for their conveyance—the intention of this law being that persons indebted might

(8) Hall's Acts, No. 148, cl. 1; 152, cl. 3, 4, 5, 6, 7, 8.

(9) 1st Rep. W. I. C. 59.

(1) See (ante, p. 3 to 16,) the re-

marks on the general topic, how far the colonies are subject to the law of the mother country.

not go privately, but might before their departure be compelled to answer all claims against them. And creditors desirous to prevent the issuing of such tickets, entered their claims at the secretary's office against the persons so intending to depart, which was called *underwriting* them.

The above acts of Assembly were passed chiefly to regulate the system of underwriting, which is still (subject to various provisions imposed by those acts) in force in the island. (2)

Besides this course of proceeding, the practice of the island authorises *arrests on mesne process*, as in England. It does not appear on what law this practice was originally founded; but "by established usage a defendant may be arrested on mesne process for any sum above £8." No affidavit of the debt is required, (3) and arrests are said to be allowed in some cases for unliquidated damages. But by the above cited act, (H. 59, cl. 4,) it is provided that "no person having ten acres of freehold land within this island shall be liable to arrest, nor any other inhabitant for any sum under 1000lbs. of sugar, or £6. 5s. in money, but be summoned to answer suits, &c. in the precinct where he lives, according to the act for judicial proceedings, unless he hath taken out his ticket to depart this island, not having given bond in the secretary's office to answer all underwritings that shall be entered against him within twenty-one days." This exemption, however, is narrowed by the act (Moore, 10,) which enacts that no person shall be exempt by virtue of that clause unless at the time of issuing the warrant he was "actually seised in fee and possessed of ten acres of freehold land within this island, under one or more such title or titles, and with such qualifications with respect to the length of possession or otherwise as would entitle a man, according to the laws of this island now in force, (4) to elect or be elected an assemblyman or vestryman, or to serve as a juror to try real actions."

(2) See preamble of No. 59, Hall's Acts, and 1st Rep. W. I. C. 35, 160.

(3) 1st Rep. 34, 159, 160. That is, no affidavit is made before the arrest. But if the arrest is for more than is really due, the defendant's attorney may give notice to the plaintiff's

attorney to attend before the judge and make oath of what is really due, and bail is taken for that sum. 1st Rep. W. I. C. 160.

(4) As to which qualification see Hall, 148, cl. 1; 152, cl. 3, 4, 5, 6, 7, 8.

## COURTS.

The courts established for the administration of civil justice in the Island of Barbados, are the Court of Chancery, the Court of Error or Appeal and Error, the Court of Ordinary, five Courts of Common Pleas, one in each district, the Court of Admiralty, and the Court of Escheat.—1 Rep. W. I. C. 19.

Besides these general courts there is, by a local act, a power vested in the governor to appoint a special court of merchants and mariners, as also a court to take cognizance of persons about to quit the island in debt, which court is believed never to have sat. There are also what is called *warrant actions*; these are described by the commissioners as excrescences growing out of the authority given to a single justice to decide claims for service or for work and labour by servants and labourers, and extending very mischievously to those who exercise any manual labour, as shoemakers and tailors, as well as to all demands arising from the sale of the produce of the island, and actions for cattle under the amount of £25.—Id. ib.

The courts for the administration of criminal justice are the Court of Grand Sessions, held twice a year; the Court of Quarter Sessions, which the commissioners said did not sit regularly when they were in the island; and the Admiralty Sessions, held *pro re nata*.—Id. ib.

*Court of Chancery.*

The Court of Chancery is composed of the governor or president, with four or more members of the council. The Governor in Chancery, though often said to act as chancellor, is only *primus inter pares*. Neither the governor as chancellor, nor the president acting as such in his absence, receives any fees. The governor sitting as chancellor has no assessor nor professional assistance of any kind. The decision is made by a majority of votes. The votes are taken singly, beginning with the junior members of the council, and are given publicly in open court.—1 Rep. W. I. C. 19.

There are two Masters appointed by the governor, and removable for misbehaviour. They are paid by commission; they have fees on the sale of estates. The Court of Chancery derives its authority from the King's commis-

sion, and was recognized as existing soon after the settlement of the colony.—1 Rep. W. I. C. p. 20.

The judges of this court are supposed to have all the authority of the Lord Chancellor in England, except in cases wholly inapplicable to the colony. They assume and exercise jurisdiction in cases of *lunacy* without any special delegation of authority, but under the supposed general jurisdiction belonging to a Court of Chancery. A petition is presented in the first instance to the governor only, he directs a hearing at the next court. The lunacy when found, is, it is said, returned into the court, and in this way they may possibly, but it is supposed mistakenly, consider themselves as getting jurisdiction.—Id. 20.

There are no instances of bills filed for making infants wards of court in this island, but it is supposed the court would exercise the same jurisdiction as the Court of Chancery in England. There is no system of laws in this island similar to the bankrupts' code in England; but the principle of the *cessio bonorum* is acknowledged in the establishment of a court for the relief of insolvent debtors. The remedy, of course, extends to persons who are not traders.

The law of descents, as regards freehold property, is the same in this colony as in England.

The law governing the distribution of personal property in cases of intestacy, in Barbados, is substantially the same as the law regulating the distribution of the same species of property in similar cases in England.

The practice of the Court of Chancery in Barbados professes to conform to that of the Court of Chancery in England, except where it is altered by local laws or special orders of their own.—Id. 20.

The decree made on a bill of foreclosure of a mortgage is to this effect, that the money be paid into court within a limited time, (usually a month,) and in default of payment a sale of the estate is directed. But to prevent a mischief, once very extensive, of estates being obtained under these circumstances for prices wholly inadequate, the property must be appraised, and cannot be sold for less than the appraised value, without express leave from the court. The appraisement is made upon oath. The appraisers are freeholders and neighbours. They receive no fees. They are said in general to act conscientiously. The master cannot receive a bidding "under the

appraisement." A bidder could not be held to a bidding below the appraisement, but the master, it is said, reports such bidding to the court, and application is then made for leave to sell for less than the appraised value. Upon this application the court exercises a discretion, taking into its consideration the circumstances of the estate, and the question whether an immediate sale is desirable.—1 Rep. W. I. C. p. 21.

On a sale after an appraisement, there is a deposit, which goes first to the payment of the costs of suit.

On behalf of a wife, for a separate maintenance, on account of misconduct in the husband, the remedy in Barbados is sought by petition to this court. Relief in such case is never obtained by bill, but by petition.

There is no examiner in this island; the registrar acts as examiner. Orders and decrees of the court are enforced as in England, by process of contempt and sequestration.—1 Rep. W. I. C. p. 22 to 24.

An appeal lies from a decision in this court to His Majesty in Council, if the sum sought to be recovered amounts to 500*l.* sterling. An appeal, it is said, lies only on a decree, or such interlocutory order as amounts to a final decree. Security is given by bond (according to the act, No. 123, Hall's Act, 10th of May, 1720,) for *treble* (5) the value of the property in dispute, and for all costs and damages occasioned by the appeal. The appeal, it is also said, in this island suspends all proceedings, even in the master's office, as the taking accounts, &c. but the party who has obtained the decree or judgment appealed against, will not be prevented from pursuing his advantage to levy and sell, on giving security in double the sum to make a return to the appellant if the decree should be reversed,—in other words, a provisional payment takes place with security for restitution. The appellant also gives security to prosecute the appeal within a year.—1 Rep. W. I. C. p. 26.

The distinction of costs between party and party, and attorney and client, did not prevail in practice, and was not familiar in name.—Id. 27.

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(5) The word in the report is *treble*; and towards the conclusion of this very paragraph the commissioners use the word *double*.  
 this seems to be a mistake. A copy of the act now before me says *double*,

*Court of Exchequer.*

The Court of Exchequer derives its authority from a law of the island, (No. 135, Hall's Laws,) and from the governor's commission. It was established in 1680 by an order of the governor and council. It was formerly considered as possessing both an equity and a common law jurisdiction. There is now no equity side of the Exchequer, except on the part of the crown; the commission is said to have been altered about forty years ago. The common law side remains, but the right to sue in it is explained and limited by the act (No. 135, Hall's Laws).—1 Rep. W. I. C. p. 30.

This court is composed of the chief baron and four puisne barons, of whom *three* may hear and determine; and the judges are appointed by the governor, with the advice and consent of the majority of the council. The tenure of the office is *durante bene placito*. They are removable, or may be suspended in the same manner as the judges in the Court of Chancery. They have no salary. The chief baron, and in his absence, the senior baron, receives certain fees; the same as the chief justice of the Court of Common Pleas. Any deed affecting real property requires to be registered, and a fee is paid on the acknowledgment. They also receive seal money, fees for taking private examinations of married women, &c. &c. The officers of the court are the remembrancer and marshal, both patent offices, performed by deputy. They are paid by fees of office; in case of misconduct in either of them, the chief baron complains to the governor, who has the power of suspending them, and the consequences are the same as were before mentioned in a like case in the Court of Chancery.—1 Rep. W. I. C. p. 30.

The Court of Exchequer sits in the Town Hall in Bridge Town, and is appointed to be holden once every four weeks on a Friday, throughout the year, for the trial of causes between party and party; but for His Majesty's business it may sit at any time.

The judges of this court profess to be governed "by the laws of England and the laws of the island." They did not appear to have any collection of rules or orders of the court prescribing any peculiar modes of practice, so that, where they differ from the practice of the courts in England, the variation is not recorded. Proceedings on

the common law side of this court for the recovery of debts, are by information by the attorney-general on behalf of the crown, and by *quo minus* by private persons. A defendant may be arrested for any sum exceeding eight pounds whether claimed as a debt or damages, and the latter may be unliquidated. For an alleged libel upon the attorney-general, a defendant, who was afterwards acquitted, was held to bail in 3000*l*. For a demand under the amount stated, (eight pounds,) a bench action lies. A bench action is in the nature of a proceeding in the English courts of conscience, and will be considered in the observations upon the Court of Common Pleas. Those freeholders who are qualified to vote at elections are exempted from arrest by process of this court. If bail are objected to, their sufficiency is determined by the chief baron. If a defendant cannot procure bail he may lie in prison an indefinite time; the plaintiff cannot be compelled to proceed with the action, and the defendant does not become super-seisable on account of the plaintiff's neglect.

There are no records of these courts on parchment, but copies of proceedings are made up upon paper, and kept by the proper officer.

The execution issuing upon a judgment recovered in this court is the same as in the Court of Common Pleas, except that executions out of this court are levied all the year round, as well in vacation as in term time.

The commissioners were not aware of any privilege the crown enjoyed, or any peculiar means it possessed of securing its dues, or enforcing payment of them in this colony. The process of the Court of Exchequer in England, at the suit of the crown, is supposed not to be executable in this island.—1 Rep. W. I. C. p. 31.

Actions in this court are said to be less dilatory, but more expensive, than proceedings in the other courts. Costs are taxed by the chief baron himself agreeably to a docket established by him under the authority of the governor.

The attorney-general was of opinion, and no doubt rightly, that a writ of error lies from a decision in this court to the Court of Appeal and Error in the island, the same as from the Court of Common Pleas. He never knew an appeal in revenue cases, but supposed there might be one. The chief baron was not aware of any writ of error, or appeal to the colonial court, but only of an appeal

to His Majesty in Council, (which is ulterior where the value is sufficient,) of which he remembered one instance arising on a penal statute. An appeal, it was again said, but the commissioners thought, under some misapprehension, would stay all proceedings.—1 Rep. W. I. C. p. 32.

### *Court of Common Pleas.*

There are five courts of Common Pleas in Barbados, one being held in each of the five districts of the island. They derive their authority from acts of the local legislature. They have the same jurisdiction as the Court of Common Pleas in England, except as to fines and recoveries. The judicial establishment consists of a chief judge and four assistant judges in each court. These are appointed and removable in the same manner as the other judges, and the tenure of their offices is the same. They have no salary; the chief judge (only) receives the customary fees for proving deeds, taking examinations of married women touching the transfer of real property, &c. &c. But the amount of all the fees of the judges of the five courts is supposed not to exceed 1200*l.* currency per annum.—1 Rep. W. I. C. p. 32.

The officers of this court are the prothonotary and marshal, patent offices, performed by deputies, who generally farm them from the patentees for a term of years. They receive fees for official services, are under the controul of the judges, and may be suspended or removed by the governor for misbehaviour.

The sittings of the courts are regulated by the statutes of the island. Each court sits in its own precinct.—1 Rep. W. I. C. p. 33.

Actions are commenced in these courts by filing a declaration in the office, and serving a copy of it together with a summons, upon the defendant personally, or at his last place of abode, except in cases of arrest. Arrests are made by virtue of a process under the hand and seal of the governor, addressed to the provost marshal, or his lawful deputy. Appearance is made on the second court day after service of the summons. The rules of practice in these courts are said to vary a little from those of the Court of Common Pleas in England.

A judgment may be obtained in general on an action in this court within a twelvemonth.



The power of arrest is exercised in these courts, but it does not appear whence it was derived. There is no law of the island by which it is given. The only law upon the subject is the one which gives the exemptions.—3 Rep. W. I. C. p. 34.

Freeholders owning ten acres of land, and capable of electing, or being elected to serve in the House of Assembly, are exempted from arrest. Not so women or Jews, or freeholders whose deeds have not been proved.

A *habeas corpus* is obtainable upon application to any chief judge, by the common law, and is supposed to make a part of the governor's instructions.

The chief justice of the precinct decides as to the sufficiency of the bail, if the sum for which the defendant is arrested exceeds 200*l*. On arrest a bond ought to be given by the plaintiff conditioned for the filing of the declaration within three days, engaging to prosecute his claim without greater delay. If the act is complied with, the object it had in view is clearly not effectuated. In a case where the defendant cannot procure bail, and goes to prison, and the plaintiff does not proceed with his action, the Crown lawyers are not agreed whether (even supposing the plaintiff's bond to be forfeited, which, however, they do not seem to consider it,) the defendant would be entitled to his discharge.—1 Rep. W. I. C. p. 35.

By the law and practice of this island, an action must be tried where the defendant lives.—1 Rep. W. I. C. p. 36.

The pleadings used are intended to be exactly the same as in the Court of Common Pleas in England.

The pleadings are all entered in the Prothonotary's Office upon one paper, and *this* serves for a *record*.

The jury indorse their *verdict* upon it, and it is signed by the foreman. The *venire* is not entered upon each issue, because there is only one *venire* upon all jury actions. The pleadings are not opened to the court by counsel. There are no abstracts made for the judges. The jury is addressed by the counsel upon all the facts, and all the law of the case. Upon arguments on special verdicts, and demurrers, &c. there are no *paper books* containing the points and authorities upon which the counsel intend to rely, made up for the information of the judges.

The proof of debts, whether by specialty or simple

contract, when the creditor resides, and the debt accrues in England, is rendered surprisingly easy by 5 Geo. 2, cap. 7. The merchant's books are produced, and the accounts sworn to before the Lord Mayor, (in London,) usually by a clerk, sometimes, it is said, by the merchant himself, the party in the cause. But the Attorney-General observed, "we object to that (the latter) now, and the court allows the objection." Yet the words of the act are, "It shall and may be lawful for *the plaintiff or defendant*, to verify and prove any matter by affidavit or affirmation, and every affidavit certified under the city seal, and transmitted, shall be of the same force as if sworn *viva voce* in open court."—1 Rep. W. I. C. 37, 38.

Witnesses attending the courts of this island do not in general receive their expenses.—1 Rep. p. 38.

When any point of law arises on trial of a cause, and the counsel on either side apply to the court to have a special verdict, the judge is bound to grant, and the jury to find it.

Unless reasons in arrest of judgment are filed, (which they frequently are merely for delay,) execution comes in fourteen days after judgment is entered up.

Judgments in this island are not registered, but are entered in the prothonotary's office, and when it becomes necessary, they must be searched for there. Lands are bound from the judgment, which renders the circumstance material. The writ of execution "runs against" or operates upon goods, lands, and body, *all at once*; somewhat resembling a statute staple formerly known in practice in England, but without the delay and charge of a "liberate." The lawyers are agreed (however the practice may have been otherwise,) that the provost marshal ought to take them *in succession*. And now a manuscript act directs, that he shall not keep the body, if lands and goods are pointed out to him.—1 Rep. 38.

The counsel in this island receive their fees (out of court) from the client himself, and not through the medium of the attorney, and it is said can recover them by action. This was the case when the characters of barrister and attorney were blended, but the doctrine would seem to be doubtful at present.—1 Rep. 40.

Writs of error are not often resorted to in Barbados for purposes of delay, being too expensive.

If a new trial is granted, it is always upon the terms of

first paying all the previous costs. Where the rule is silent as to costs, the construction is the same as in the Court of Common Pleas in England, not as in the Court of King's Bench. (6)

### *Bench Actions.*

Actions brought for the recovery of a debt not exceeding eight pounds, are denominated bench actions, being decided without the intervention of a jury. They are tried by any one of the judges of the Court of Common Pleas, on one of the court days after the jury actions are finished.—1 Rep. W. I. C. p. 42.

### *Court of Ordinary.*

The Court of Ordinary derives its authority by commission from the crown. The governor or president being commander-in-chief of the island, is sole judge. He sits *alone*, having no legal power of calling in any assistance.

The probate of wills, granting letters of administration and marriage licenses, form the subject-matter of his jurisdiction. Marriages are either by banns or license from the governor as ordinary. They have no canonical hours in the colonies, and marry at what time they please.

All wills are proved, but the probate is conclusive only as to personalty. There are no restrictions on the power of disposing of property by will in this island. The solemnities requisite to the validity of a will are nearly the same as in England, but the Barbadian statute of frauds requires only *two* witnesses to a will of lands, and even this rule is accompanied with a proviso, that "the act shall not be construed to extend to any will, written throughout in the handwriting of the testator."

The court sits at the government house as often as occasion requires. It is doubted whether an appeal lies from this court to the King in Council, or to His Majesty, as head of the Church. But in either case the appeal from this court is direct and immediate. There is no power of enforcing the payment of costs; consequently there is no *taxation* of them, and no table of *fees*.—1 Rep. p. 43.

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(6) Tidd's Practice, 9th edit. 916.

*Court of Admiralty.*

The Court of Admiralty consists of two courts, a Prize and an Instance Court, both held by commission issuing from the High Court of Admiralty in England. Both possess the same jurisdiction as is exercised by the corresponding courts in England, as nearly as circumstances will permit. The prize court is held only in time of war. The cases in the instance court consist of claims on seizures by custom-house, seamens' wages, bottomry bonds, &c. &c.—1 Rep. p. 43.

A sole judge of both courts is appointed from home in time of war. The court is held as occasion requires. The officers of the court are the King's advocate, the King's proctor, the registrar, and the marshal. In time of war the judge receives a salary. The judge, in peace, is paid by fees. The King's advocate has no salary, and receives no fees for a prosecution at the Admiralty Sessions. The registrar and marshal are patent officers paid by fees. There is a great deal of business in the Prize Court in the time of war. The receipt of fees has sometimes exceeded the judge's salary (which is 3000*l.* sterling per annum,) in which case it goes on to pay the next year's stipend. The fees of the Court of Admiralty are everywhere excessive. Where a seizure from smugglers amounts to 100*l.* or upwards, a condemnation will not enable the captors to pay the expenses.

The Admiralty Sessions are held by a separate commission for the trial of murder, piracy, and other offences committed on the high seas. This court is composed of the Judge of the Admiralty who presides, the members of the council, and all flag officers and captains on the station. The attorney-general and King's advocate are employed. In this court no fees are taken. The sessions are held as occasion requires.—*Id.* 44.

*Court of Appeal and Error*

The Court of Appeal and Error is composed of the governor and council. There is no lawyer upon the bench. Some of the judges are members of it, but it is provided by the governor's instructions that they shall not vote in any case brought from the court where they have acted as judges. The governor and council decide

by a majority. A writ of error to operate as a stay of execution, must be brought within fourteen days after judgment. It only lies where the principal sum in dispute amounts to 300*l.* calculated in sterling money, costs not included. An ulterior appeal lies to the King in Council where the value is 500*l.* It is said that no appeal will lie for costs *eo nomine et per se*. The security to be given is regulated by the Governor's instructions, and the acts (Nos. 22, 90, and 143,) of the island.—1 Rep. 44.

#### *Escheat Court.*

The Escheat Court sits under a commission. The cases in which it has jurisdiction, are commonly forfeitures to the Crown for want of heirs. An escheator-general is appointed by the Governor.—1 Rep. W. I. C. p. 45.

#### CRIMINAL COURTS.

##### *Court of Grand Sessions.*

This, the principal court for the administration of criminal justice, is held under the authority of an act of the island. A commission of oyer and terminer and general gaol delivery is issued by the governor, for the trial of all capital crimes and misdemeanors, in which all those gentlemen of the island who are in the commission of the peace are included. The person who presides is generally a member of the Council, or one of the chief judges, the chief justice, or chief baron. The court is held twice a year, in June and December, and the commission is limited to four days.

All offences committed by free persons, whether coloured or otherwise, are tried at this court. This court professes in its decisions and practice to follow the laws and rules of the criminal courts in England. The preliminary proceedings which take place before the trial of persons accused of offences, as the complaint, warrant, apprehension, examination, and commitment, are all transacted before a justice of the peace in the same manner as in the mother country. Depositions are taken in almost all cases,—misdemeanors as well as felonies.—1 Rep. W. I. C. p. 45.

All offences committed by freemen are *bailable*, except murder.

Justices of the peace and coroners, are by law required to attend these courts. The magistrate binds over the party to appear and prosecute, but not always the witnesses to give evidence.

A list of commitments is made out by the gaoler, and sent to the attorney-general, who frames the indictment and conducts the prosecution, for which he receives a fee from the prosecutor when the latter is of ability to pay it, "not under five pounds."

Judgment may be arrested on the same grounds as in England, but it must be determined before twelve at night on Friday. After sentence, the Governor has the power of reprieve and pardon in ordinary cases, but in treason and murder the Crown alone can pardon; the Governor suspending the execution and sending the case home.

The grand jury will not receive a bill that is not presented by the attorney-general, the attorney-general conducts all prosecutions.—1 Rep. W. I. C. p. 46, 47.

#### *Court of Quarter Sessions.*

A Court of Quarter Sessions is by law established in every parish, amounting to eleven in the island. Two justices form a court; the senior taking the chair. This court, though empowered by a local act to hear and determine offences of petty larceny and misdemeanors, supposes and acts upon the opinion, that it cannot summon a jury. This court, transacting no business, is not attended by any professional persons whatever.—1 Rep. W. I. C. p. 47, 48.

#### *Barristers and Attornies.*

It is now required (prospectively) that gentlemen admitted to practise as counsel in these courts, shall previously have been called to the bar in England. It is necessary for gentlemen applying to act as attornies or solicitors in this island, to produce a certificate of having served a clerkship for five years either in England or the West Indies, and a testimonial of good character must be signed by two barristers, which is usually done by the attorney and solicitor-general. They then receive a commission from the governor. They are admitted and take the oath in every court in which they intend to practise. They do not pay any fee, and are not restricted to any particular number of clerks.—1 Rep. W. I. C. p. 59, 60.

*Debtors Absent, or Absconding.*

An act to enable creditors to recover their just debts out of the effects of their absent or absconding debtors. — Hall's Laws, No. 202, 17th March, 1753.

By this act it is provided that if any person being indebted, either absconds or departs, leaving behind him or her any outstanding debts, goods, or merchandise, all or any of the judgment creditors may attach such monies, goods, and effects in the hands of the person with whom they may be found, by serving him with a summons in the nature of a writ of scire facias, and creditors not having obtained judgment may enter an action against the absconding or departed debtor, and serve the same on any person indebted to him, or in whose hands there are any of his goods or effects, which service shall be a warning on the party served, not to pay the debtor absenting or departing, at peril of his being afterwards obliged to pay the plaintiff what he shall prove due. The act then provides, that the person served may appear to the sci. fa. or action, and show cause why the money, &c. should not be condemned to the use of the plaintiff, or he may plead that he has no money, &c. in his hands, or any other special matter. And that the plaintiff shall not have execution till he puts in bail, conditioned that if the debtor absconding or departed, shall appear in the said court within a year from the judgment, and discharge himself, and prove that he owed nothing, or not so much, the money or goods, or their value, shall be forthcoming. For other regulations on the subject the reader is referred to the act itself. The following remarks on this subject are made by the commissioners appointed to inquire into the civil and criminal administration of justice in the West Indies. "These laws resemble foreign attachments in London. They are a very powerful instrument in the colonies, giving the local creditor a considerable advantage over the foreign claimant; but it was complained that they were found expensive. The costs in ordinary cases are ascertained to be about 28*l.* 10*s.* By these means a creditor may attach effects belonging to a defendant, who has himself escaped, in whatever hands they are found. No affidavit of the debt is required by the act. A creditor not having judgment must enter an action against

such absent or absconding debtor, and serve it on the person in whose hands or power any effects are discovered to be, which has the effect of attaching them to the use of the plaintiff. A judgment creditor serves a *scire facias*. The plaintiff gives security for restitution in case the absent debtor shall appear within a year. The garnishee pleading that he has nothing in his hands of the plaintiff to be attached, may be put to swear to the truth of his plea, but then his oath will be conclusive of the fact. The garnishee making default is without relief either in law or equity. (8)

*Aliens and Foreigners.*

“An Act to prohibit masters of ships and other vessels from landing aliens or foreigners in this island, without a license for so doing from the Governor or commander-in-chief of this island, for the time being.”—Hall, 134, passed 26th June, 1717.

COLLECTION OF LAWS.

There are two printed collections of the acts of the legislature of Barbados,—Hall's Laws, published in one volume folio, 1764, and Moore's Laws, edited in 1801, in one volume 8vo., both incomplete, and the former in a remarkable degree inaccurate and defective. They were published, however, under authority of the legislature, by whom they are made evidence. (9) Hall's Collection contains the acts from 1643 to 1762; that of Moore, the acts from 11th May, 1762, to 8th April, 1800. The later acts of the island remain in manuscript. The manuscript acts not in print, are said to amount to 247. The acts themselves are deposited in the Colonial Secretary's Office, and copies are directed to be kept in the parish churches. Persons desirous of consulting them can only do so by applying at the Secretary's Office, or to the Clerk of the Vestry. A fee is paid by persons requiring a transcript. (1)

(8) 1 Rep. W. I. C. 42.

(9) Hall, No. 30; Moore, No. 67. There had before been printed editions of the Laws by Rawlin, by

Zouch, and by Salmon. See Preface to Hall's Collection.

(1) Rep. W. I. C. 6, 7, 123.



## GRENADA.

*Grenada* is one of the Caribbee Islands in the West Indies, thirty leagues N. W. of Tobago. (1) It is computed to be about twenty-four miles in length, and twelve miles in its greatest breadth, and contains about 80,000 acres of land. It is divided into six parishes, St. George, St. David, St. Andrew, St. Patrick, St. Mark, and St. John. The capital town is that of St. George, a name conferred by an ordinance of Governor Melvill, made soon after the cession of the island to Great Britain in 1763; the former appellation, during the dominion of the French, having been Fort Royal. By the same ordinance English names were given to all the several towns and parishes, and the French names were forbidden to be thereafter used in any public acts. (2)

There are several smaller islands in the vicinity of Grenada, known by the general name of the *Grenadines*, and supposed to be about 120 in number. But few of these, however, are now comprised in the Grenada government. By an arrangement which took place after the peace of 1783, a line of division was drawn from east to west between Cariacou and Union Island. The former of these, and some smaller islands to the south of it, belong to the Grenada government, while Union Island, and those to the north, were annexed to the government of St. Vincent. (3) Both these governments are now subordinate to that of Barbados (see ante, 123.) Cariacou, which was the chief dependency of Grenada, forms a seventh parish in addition to the six already enumerated. (4)

(1) Brookes's Gazetteer.

(2) 1 B. Edwards, 383, 385.

(3) Ib. 381. Mr. Edwards does not notice the authority under which this division took place, but it was probably

that of a proclamation dated the 10th of January, 1784, which is referred to in an act of the Grenada Assembly of the 9th of March, 1784.

(4) Ibid. 384.

## HISTORY AND CONSTITUTION.

Grenada was discovered by, and received its name from Christopher Columbus in 1498. It was then in the possession of the Charaibes, and these were left undisturbed by the Spaniards, who do not appear ever to have attempted to form a settlement.

In 1650, Du Parquet, a Frenchman, invaded the island, established a colony there, and exterminated the whole race of its native possessors. The rights of the individual who thus effected the conquest, were sold to another person, by whom they were conveyed to the French West India Company, whose charter being abolished in 1674, the island from thenceforth became vested in the crown of France.

In February, 1762, Grenada surrendered on capitulation to the British arms, and with its dependencies was formally ceded to Great Britain by the definitive treaty of peace at Paris, on the 10th of February, 1763. The chief stipulations in favour of the inhabitants, as well by the treaty as by the articles of capitulation, were these: 1. It was agreed that Grenada should continue to be governed by its then present laws until His Majesty's further pleasure was known. 2. As they would become by their surrender, subjects of Great Britain, they were to enjoy their properties and privileges, and pay taxes in like manner as the rest of His Majesty's subjects of the other British Leeward islands. 3. With respect to religious worship, they were put on the same footing as the inhabitants of Canada, viz. liberty was given them to exercise it according to the rites of the Roman Church, as far as the laws of Great Britain permitted. 4. Such of the inhabitants of Grenada as chose to quit the island were at liberty to do so, and eighteen months were allowed them to dispose of their effects. (5)

By royal proclamation, bearing date 7th October, 1763, it was declared that His Majesty had, by advice of His Privy Council, granted letters patent under the great seal to erect within the countries ceded by the Treaty of Paris, four distinct governments, one of which was to be "the

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(5) 1 B. Edw. 353 to 360; and *Campbell v. Hall*, Cowp. 204.

government of Grenada, comprehending the island of that name, together with the Grenadines and the islands of Dominica, St. Vincent, and Tobago," and that His Majesty had in the letters-patent directed the governors of such governments, "that so soon as the state and interests of the said colonies should admit thereof, they should, with advice and consent of the members of our Council, summon and call General Assemblies within the said governments respectively in such manner and form as is used and directed in those colonies and provinces of America which are under our immediate government," and had also "given power to the said Governors with consent of the Councils and representatives of the people so to be summoned, to make constitutions and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies;" and had also "given power under our great seal to the Governors of our said colonies respectively, to erect and constitute, with advice of our said Councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, &c." (6)

By another proclamation, bearing date 26 March, 1764, His Majesty recites that he had directed a survey and division of the ceded islands, and had ordered them to be divided into allotments as an invitation to purchasers to come in and purchase upon the terms and conditions specified in that proclamation. (7)

By other letters-patent, under writ of privy seal, bearing date the 9th of April, 1764, General Melvill was appointed Governor of Grenada, the Grenadines, Dominica, St. Vincent, and Tobago, with power to summon, by advice and consent of his Council, General Assemblies in those islands as soon as the situation of the islands would admit. And the Governor, by advice and consent of the Council and Assembly, were to make laws which were "not

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(6) This proclamation is prefixed to Smith's Laws of Grenada.

(7) *Campbell v. Hall*, Cowp. 204.

This proclamation will be found more at large in Lofft's Reports, p. 661.

to be repugnant; but as near as might be agreeable to the laws and statutes of the kingdom of Great Britain." (8)

Under these letters-patent an Assembly was first convened in Grenada in 1765; (9) the legislative authority, prior to that period, having been exercised by General Melvill and his Council. (1)

As the question of the right of the Crown to impose by proclamation the four and a half per cent. duty after the grant of a legislative Assembly had passed the great seal was discussed with reference to this particular colony, it may not be out of place now to give some account of the proceeding.

The Crown, conceiving itself entitled by the terms of the capitulation and treaty of peace, to levy in Grenada and the other ceded colonies, the same *four and a half per cent. duty* on exported produce as is paid in the other Leeward Caribbee Islands and at Barbados, issued letters-patent bearing date 20th of July, 1764, directing that from and after the 29th of September then next ensuing, such duty should be raised and paid upon the export of dead commodities from Grenada, in lieu of all customs and duties hitherto collected under the authority of the French king.

This claim on the part of the Crown being disputed in Grenada, an action was brought in the Court of King's Bench in England to try its validity. (2) In defence of the claim, it was urged that Grenada being a conquered country, the King was invested with the power of putting the inhabitants under what form of government he thought best; that he might have granted them what terms of capitulation, and concluded what articles of peace with them he saw fit, and that the assurance to the inhabitants of Grenada in the articles of capitulation granted, that they should enjoy their properties and privileges in like manner as other of His Majesty's subjects in the British Leeward Islands, necessarily implied that they were bound to submit to the same consequences of their being subjects as were submitted to by the inhabitants of those islands,

(8) Preamble to Colonial Act of 23d of April, 1792, intituled, "An Act for Regulating Elections." And see *Campbell v. Hall*, Cowp. 207, and Lofft's Rep. 662, where these letters-patent are more fully given.

(9) 1 Edwards' Hist. 361; Cowp.

207.

(1) Smith's Preface to Laws of Grenada.

(2) See the Report of this case, *Campbell v. Hall*, Cowp. 204, and the special verdict therein, Lofft's Rep. 657.

one of which was the payment of the duty in question. On the other side it was contended that the letters-patent were void on two points. First, that even had they been granted before the proclamation of the 7th of October, 1763, yet the King could not exercise such a legislative power over a conquered country. The second point was, that even if the King had sufficient power before the 7th of October, 1763, to do such a legislative act, he had divested himself of it by the two proclamations, and the commission to Governor Melvill. And the Court of King's Bench, after argument, were of opinion, on the second point, "that by those proclamations and commission, the King had immediately and irrecoverably granted to all who were or should become inhabitants, or who had, or should acquire property in the Island of Grenada, or more generally, to all whom it might concern, that the subordinate legislation over the island should be exercised by an Assembly with the consent of the Governor and Council, in like manner as the other islands belonging to the King." (3) Lord Mansfield accordingly pronounced the judgment of the court on this ground against the Crown's claim; and the duty was thus abolished not only in Grenada, but also in the ceded islands of Dominica, St. Vincent, and Tobago. It is observable, however, that on the first point the court expressed an opinion favourable to the Crown, and held that prior to the proclamation of October, 1763, Grenada, as a conquered country, was liable to the imposition of taxes by the sole authority of the King. His lordship referred to the reports made to the King by attorney and solicitor-general Yorke and Wearg, in 1722, in favour of that opinion. The principle had been discussed and decided in a similar manner on a previous occasion. By the instructions given to Colonel Codrington, the Governor of St. Christopher's, it seems that he was ordered to levy the four and a half per cent. duty on the whole island, under the authority of the act that had granted it in respect of that part of the island belonging to the English when the act was passed. The question of the right to do this was submitted in 1704, to the consideration of the attorney-general Northey, who reported "that the officers of the English part of St. Christopher's had no authority, by virtue of the plantation

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(3) *Campbell v. Hall*, Cowp. 213.

act made there for the four and a half per cent. on goods, to levy the same on goods exported from that part of St. Christopher's lately gained by conquest from the French, that law extending only to such part of the island as belonged to England when the law was made;" but he added, "her Majesty may, if she shall be so pleased, under the great seal of England, direct and command that the like duty be levied on goods exported from the conquered part, and that command will be a law there, her Majesty by her prerogative being enabled to make laws that will bind places obtained by conquest, and all that shall inhabit therein." (4) The prerogative of the King, before the date of the proclamation of October, was clear; but by that proclamation, followed up by his commission to Governor Melvill, he divested himself of the right to exercise it. To return to the subject of the transactions in the colony.

By one of the ordinances of Governor Melvill and his Council, bearing date 9th of March, 1765, and made apparently before the legislative power of the assembly had come into operation, Courts of Common Pleas and of Error were established in this island. The earliest act in Mr. Smith's collection is under date 29th November, 1766, and several other acts were passed in that and the following year, and among others, an act under date of 14th October, 1767, for establishing Courts of Common Pleas, Error, King's Bench, and Grand Sessions, &c. (5) But, "from the papers extant in the Plantation Office in England, it appears that both General Melvill and the government were much dissatisfied with the first Assembly, the Governor having hastily dissolved them at the close of the year 1767, while the Privy Council disallowed five of their principal acts." And after the 14th of October, 1767, it seems that "no legislative proceedings took place until the year 1769."

"On the 13th of December, 1768, a proclamation issued, reciting a variety of regulations for the purpose of electing and calling together the Assembly of Grenada. In pursuance of this proclamation the legislature was assembled early in 1769;" and from this period to November, 1778, various acts were passed, among which was one act of the 3d of March, 1770, (6) for explaining and

(4) 1 Chal. Op. 141, and on the subject of the  $4\frac{1}{2}$  per cent. duties, see ante 50, 51, n.

(5) Smith's First Table, prefixed to the Laws of Grenada.

(6) Smith's Preface, xi. First Table, xvi.

amending the former act for establishing Courts of Common Pleas, &c.

On the fourth of July, 1779, Grenada was captured by the arms of France, but was restored (with the Grenadines) to Great Britain by the general pacification which took place in January, 1783 ; (7) and the English government was re-established there early in the year 1784 under General Mathew, (8) who was sent out as Governor of "Grenada and the Grenadines lying to the southward of the Island of Cariacou, including that island," (9) which has, until very lately, continued to be the style of the Grenada government.

On the 16th of March, 1784, an act passed the Grenada legislature intituled "An Act for removing doubts with respect to the laws which are to be deemed in force in those islands upon their restitution to the Crown of Great Britain." This act recites, that doubts might arise whether and how far the laws which were in force at the time of the capture by the French in 1779, "were absolutely annihilated or only suspended during the continuance of the war, so as to revive again" by the restoration to the Crown of Great Britain, and proceeds to enact "that all such parts of the common law of England, and all and every such parts of the statutes or acts of parliament as were in force and binding in Grenada and the Grenadines, whilst the same were heretofore a part of the British dominions, are hereby declared, and the same shall be in all courts and other places held and allowed, to be equally in force and binding within the islands of this government, and so to have been ever since the restoration of Grenada to the crown of Great Britain as aforesaid." And with respect to the colonial acts passed while the island was formerly under the King's dominion, it revives and declares in force certain of those acts therein enumerated; enacts by another clause, that certain others shall be in force only till further regulations made, and provides that "all other acts at any time heretofore passed in Grenada, and not mentioned in either of the two preceding clauses, shall be deemed expired."

(7) Preamble to Grenada Act, 16th of March, 1784; 1 B. Edw. 376 to 380.

(8) Smith's Preface, ix.

(9) Grenada Act, 20th of February, 1784; Smith's First Table, xxiii. and see Grenada Act, 9th of March, 1784. See ante, 197, and n. (3).

Acts were afterwards passed at different periods for re-establishing the different courts of justice. Among these need only be noticed an act under date 27th of March, 1784, intituled "An Act for establishing a court for hearing and determining errors, or writs of error, to be brought from the judgment of the Court of Common Pleas or Exchequer, and for directing the manner of proceeding in such Court of Errors;" an act under date of 23d December, 1790, intituled "An Act for re-establishing a Court of Common Pleas and a Court of Complaints, &c.;" an act of 4th of October, 1800, intituled "An Act for establishing a Supreme Court of Judicature, and uniting therein the jurisdictions of the several Courts of King's Bench and Grand Sessions of the Peace and Common Pleas heretofore established in this island;" and an act of 26th of January, 1801, intituled "An Act to alter and amend an act therein mentioned for establishing a Court for hearing and determining errors so far as the same relates to the number of justices necessary to compose the said court." These four acts are all mentioned by Mr. Smith as in force. (1) That of 4th of October, 1800, (No. 87,) consolidates in one "Supreme Court of Judicature" all the jurisdictions civil and criminal, vested in the King's Bench, Common Pleas, and Exchequer in England, (2) except the jurisdiction of the English Common Pleas as to fine and recovery, and the equitable jurisdiction of the English Court of Exchequer. (3)

Since the re-establishment of the English dominion in 1784, this island, with its dependencies, has been governed (according to the usual method) under commissions granted by the crown to the successive Governors, with accompanying instructions, and the legislative power has continued to be vested in the Governor and Council and the House of Assembly.

The Governor presides solely in the Courts of Chancery and Ordinary. His salary is 3200*l.* currency per annum, which is raised by a poll-tax on all salaries, and it is the

(1) Smith's Second Table, xlvii.

(2) See clause 2 of the Act, 1st Rep. W. I. C. 102; Smith's Second Table, xlvii.

(3) 1 Rep. W. I. C. 102. With

respect to the *Court of Chancery* in this island, it derives its authority from the proclamation of 1763, and the Governor's commission.—1st Rep. 100.



practice in Grenada to pass a Salary Bill on the arrival of every new Governor, to continue during his government. In all cases of absence beyond twelve months, the salary ceases and determines.

The Council consists of twelve members, and the Assembly of twenty-six. A freehold, or life estate of fifty acres, is a qualification to sit as a representative for the parishes, and a freehold, or life estate in 50*l.* house rent in St. George, qualifies a representative for the town. An estate of ten acres in fee or for life, or a rent of 10*l.* in any of the out towns, gives a vote for the representatives of each parish respectively, and a rent of 20*l.* per annum issuing out of any freehold or life estate in the town of St. George, gives a vote for a representative for the town. (4)

#### *Ordinances.*

Eight ordinances for the government of this island are stated to have been issued by General Melville (the first English governor) and the General Council, between the 28th of July, 1765, and the 12th of April, 1766; of which *three* related to the government of slaves; *three* to the establishment of courts of justice (on the English model); *one* to the collecting of taxes, and one regulated the election of members of the General Assembly.

#### COLLECTION OF LAWS.

There is a collection of the laws of Grenada from the year 1763 to the year 1805, edited by Mr. George Smith, formerly Chief Justice, and an act of March 15th, 1809, "making the printed collection of the laws of Grenada, lately published by the chief justice of this colony, legal evidence in all courts within these islands." There are also two supplements of laws, collected and printed at subsequent times, coming down to the 4th of March, 1819, and in 1825 there were about twenty acts remaining in manuscript.—1st Rep. W. I. C. p. 93.

By an Act of Assembly of 16th September, 1807, after reciting that some of the acts of these islands being written upon paper had been worn out and obliterated, and others had lost the great seal of the colony, by which they were authenticated, by reason whereof their validity might be-

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(4) 1 B. Edw. 388.

come questionable, it is enacted, that every act made since 18th July, 1805, when General Maitland assumed the government, and all others thereafter to be made, should be fairly entered and recorded in the secretary's office, in a book to be kept for that purpose, within one month after publication, under a penalty of £100; that such entry should be compared with the original, and when duly certified as correct by the President of the Council, &c., should be received in evidence in all courts in the islands. And that all proclamations to be thereafter made should be entered and kept in like manner.

GENERAL LAW OF THE COLONY. (5)

The Attorney-General of Grenada, on his examination under the late commission for inquiry into the administration of justice in the West Indies, says that Acts of Parliament of Great Britain passed before 1763 (subject of course to the usual qualification of their being applicable in their nature) bind this colony, but none passed since; unless the colony is in some manner designated. (6)

We have already had occasion to notice the proclamation of 1763, by which it appears that His Majesty had authorized the erection of courts of justice for determining causes, as well criminal as civil, as nearly as may be agreeable to the laws of England; the letters-patent of 9th April, 1764, by which the Assembly is to make laws "as nearly as may be agreeable to the laws and statutes of Great Britain." We have also noticed the subsequent establishment of courts of justice, and the convention of Houses of Assembly, in pursuance of these authorities, and it has been shown that the Colonial Act of 16th March, 1784, declares that all such parts of the common law of England, and all such parts of the statutes and Acts of Parliament as were in force in Grenada and the Grenadines before the capture by France, in 1779, were equally in force since their restoration. The conclusion from these documents seems to be, that both the common and statute law of England, as they existed in 1763, so far as in their nature applicable to the colony, and so far as not

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(5) See the remarks (ante, p. 3 the colonies are subject to the laws of the mother country.

(6) 1 Rep. W. I. C. 124.

altered by the Colonial Acts revived by the act of 1784, or by those passed since, are now binding in Grenada.

“Although there is no law in Grenada,” says Mr. Edwards, “declaring an adoption of the laws of England, yet it has always been the practice of the courts to consider both the common and statute law of England to extend to Grenada in all applicable cases not otherwise provided for by particular laws of the island. So in like manner the practice of the courts in Westminster Hall, and authentic reports of adjudged cases there, are resorted to when precedents and authorities are wanting in the island.” (7)

#### COURTS.

The courts established for the administration of civil justice in this island are the Court of Chancery, the Supreme Court of Judicature, the Court of Ordinary, an Instance Court of Admiralty, a Court of Error, and the Court-Merchant, established by No. 10, Smith's Laws, but now become obsolete.

The courts established for the administration of criminal justice are the Supreme Court, in its character of a Court of King's Bench and Grand Sessions; the Admiralty Sessions, and the Slave Court. There is no Escheat Court in this island, but, in cases of escheat, a commission is issued as in England.—1 Rep. W. I. C. p. 100.

#### *Court of Chancery.*

The Court of Chancery in this island derives its authority from the King's proclamation in 1763, and the governor's commission. The Governor sits alone as Chancellor, with authority similar to that of the sole Chancellors in the other islands. The laws and rules are the same as in England, excepting some alterations made by a Colonial Act, No. 29, and a few rules, laid down at different times by the Court itself for its guidance or convenience. The court sits whenever there is occasion. The business consists chiefly of bills of foreclosure and questions as to priority of incumbrances; and, by an act of the island, the Court of Chancery of Grenada had jurisdiction given to

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(7) 1 B. Edwards, 390.

it in cases where freedom was left by will, and the executor, having assets neglected to manumit the slave.

The officers of the court are the same as in the other islands. There is only one master. He is paid by fees, and does not give security. He alone appoints a receiver.

A receiver of an estate gives security in double the amount of one year's crop. This account ought to be passed yearly before the master, and his salary paid only on accounting.

Monies paid into court are sometimes remitted to England and placed in the funds, sometimes retained in the hands of the officer of the court. The master is allowed  $2\frac{1}{2}$  per cent. on receipt, and  $2\frac{1}{2}$  per cent. on payment of monies.

Injunctions are known to be granted in two cases—to stay proceedings at law, and to restrain the shipment of produce. An appeal lies from all orders of this court, interlocutory and final, to His Majesty in Council, for matters of the value of £500 and upwards, and a recognizance is entered into by the appellant and two sureties in £500. The respondent gives a security fixed by the master, and then is allowed to take the benefit of the decree below.

An absent plaintiff gives security for costs to the amount of £40.—1 Rep. W. I. C. 100, 101.

#### *The Supreme Court.*

In this court are united (by an Act of the Island, No. 87,) the authority of the Court of King's Bench and Grand Sessions (formerly established by an act, No. 30,) and the jurisdiction of the Court of Common Pleas, and Court of Complaint, (revived by an act, No. 62.) The Supreme Court of Judicature, by virtue of this consolidating act, is composed of a chief justice (appointed from England) and four assistant judges, is held six times in the year, and is said to have all the jurisdiction of the Courts of King's Bench, Common Pleas, and Exchequer in England. It does not, however, exercise the equitable jurisdiction of the Court of Exchequer in England; and fines cannot be levied or recoveries suffered under its jurisdiction as a Court of Common Pleas; but a deed, acknowledged before a judge of the Court of Common Pleas in England or

Ireland, or the colonies, will have, under No. 25, Smith's Laws, the same operation as a fine or recovery; as will also, under the marshal's sale, by cl. 101 of No. 62, the marshal's conveyance of an estate tail.

The court follows the rules and laws of the respective courts in England, with a few rules laid down by the different Acts of Assembly, and by the judges at various times. *Clause 3 of the Court Act*, directs the mode of serving process on absent defendants, viz. nailing a declaration on the court-house door. Persons who have never been in the island are considered as absent defendants for such purpose. (8) A power of arrest is given and regulated by the Court Act. The debt must amount to £10, except in case of transient persons, and there must be an affidavit of the debt. Arrests are allowed in other cases upon a special order from a judge. When a party is about to leave the island the chief justice has allowed him to be arrested for unliquidated damages. In uncertain demands the judges in court or at chambers, are empowered to moderate and settle for what sum bail shall be demanded. There are no exemptions from arrest. By clause 14 of No. 62, the plaintiff is compelled to proceed with his action in six days, or costs may be given for want of prosecution. The attachment of debts is frequently resorted to. The expense is about £21. 4s. 3d. Depositions are used on trials, as in the other islands, and without affidavit that the witness is still absent or unable to attend.

#### *Juries.*

The names of the jurors returned by the marshal are written on tickets and put into a hat, and then a sufficient number drawn out to compose two juries of twelve each. Special juries are known in practice here.

#### *Executions.*

Executions are taken out, lodged, and suspended. By clause 66 of the Court Act, they bind from the time they are lodged in the marshal's office, and he is bound to minute the precise time of their delivery.

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(8) But judgment obtained on process served in that manner cannot be enforced in England, see ante, p. 93.

Injunctions are frequent to stay executions, more so than to stay proceedings.

*Fees.—Costs.*

There is a table of fees of the officers of the court kept in their respective offices. There is also a table of fees of solicitors, as between party and party. Costs are taxed as between party and party.—1 Rep. W. I. C. 102, 103.

*Complaint Court.*

Actions, denominated complaints, are brought in this island, under a provision of the Court Act, for sums not exceeding £10, and where the original cause of action, if it have been reduced to £10, did not exceed £30. The court is held before a single judge of the Supreme Court. These trials do not occupy more than one day, and are very speedily decided. Counsel or solicitors are seldom employed. The plaintiff and defendant in such cases plead in person, and may both be put upon oath.—1 Rep. W. I. C. 104.

*Court of Ordinary.*

The Governor, by virtue of his commission, is sole judge in the Court of Ordinary, which is held at the court-house whenever there is occasion. He has no assessor. Marriages take place by banns in this island, as well as by license from the Governor. There are no means of obtaining a divorce in this island, nor any by which a wife may obtain a separate maintenance.

The practice is to prove a will though it relates only to real estates.

Wills are returned to the parties proving them.

Costs are taxed, and an attachment, it is supposed, might issue to enforce payment of them.

An appeal is said to lie to His Majesty in Council.—1 Rep. W. I. C. 104.

*Court of Admiralty.*

This court, in the opinion of the Attorney-General, derives its authority from the Act 7 & 8 Wm. 3, c. 22.

The subjects of its jurisdiction are matters of revenue." It doubtless existed before the 7th & 8th Wm. 3, but that act enlarged its powers. The jurisdiction is exercised only in the Instance Court. There is no Prize Court. The judge is appointed by the Governor as Vice-Admiral. In its decisions and practice the court follows partly the law and practice of the Court of Exchequer, and partly of the Instance Court in England. For the statute 7 & 8 Wm. 3, ch. 22, is supposed by the Crown Officers of the island to enable the Admiralty Court *here* to do whatever may be done in the Court of Exchequer at home. Until lately, the chief justice was judge of this court.—1 Rep. W. I. C. 104.

#### *Court of Appeal and Error.*

This court was established (under Nos. 27 and 88 Smith's Laws,) for writs of error from the superior court, and from that court only. The judges are the governor and three members of the council, who have not sat as judges in the court below. The act provides for security from the plaintiff in error, or appellant. The appeal must be brought within twenty years. (9) The proceedings are not attended with much expense.

Appeals to His Majesty in Council are not frequent, and are attended with considerable expense. The terms are, giving security (according to No. 27, clauses 18 & 19) and the governor's instructions.—1 Rep. W. I. C. 104.

#### *Criminal Jurisdiction of the Supreme Court.*

This branch of the Supreme Court is held under the acts (Nos. 30 and 87 Smith's Laws.) Whenever the Attorney-General sees occasion, he applies for a court, and that a grand jury may be summoned. The act provides that no writ for a grand jury shall issue *of course*, but only by direction of the court. In such case the marshal is commanded to summon thirty persons of the best note, freeholders and inhabitants, to serve as grand-jurors, and forty-eight persons to serve as petit jurors. Their attendance is secured by fines of £10 and £5. The

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(9) This is the time stated, 1 Rep. W. I. C. 104, 193. The period is considerable.

proceedings before trial, as to the warrant, apprehension, examination, and commitment of prisoners, are precisely the same as in England. Recognizances and depositions are returned by the magistrates to the Crown office, and by the Clerk of the Crown to the Attorney-General, four days before the sitting of the court, and the Attorney-General, when he thinks proper, frames the indictment. The grand jury will not receive an indictment unless it is signed by the Attorney-General, for which, on public business, a fee is allowed by the legislature.

Informations *ex officio* are sometimes filed by the Attorney-General, and criminal informations are also sometimes granted at the instance of a private person, as in England.

This court follows the laws and rules of the criminal courts in England, and a few prescribed by acts of the colony. The Attorney-General considers the common law, as to crimes, and all the criminal laws passed in England before the charter of the island to have effect here.

The names of witnesses are indorsed on the bill by the Attorney-General, out of court, before it goes to the grand jury, but the witnesses cannot be objected to before the trial, nor until a bill is found. Counsel are allowed to address the jury on behalf of prisoners in this court, expressly by an act of this island, and the Attorney-General considers that, in the colonies, where the judges are not lawyers, such an act is particularly proper.

The chief justice presides in this court, and sums up, when present, if not, the senior assistant-judge.

Indictments and pleas are drawn as in England, but only filed, and not made up as a record, except when necessary.

Prosecutors and witnesses are not allowed their expenses and costs.—1 Rep. W. I. C. 104, 105.

### *Judges.*

All the judges hold their offices during pleasure. The chief justice of the Supreme Court is appointed from England, by mandamus from His Majesty. He has a salary of £2500 currency, established by an act of the colony, and also fees, which according to a docket in the possession of the secretary, are said to be about £700 per annum.



The assistant-judges have no salary, and from curtesy do not receive fees, except where they transact business in the absence of the chief justice. It is said, however, to be doubtful whether they have not the right. They are appointed by the governor and council.

*Attorney-General.*

The Attorney-General in this island has no salary. He has an account with the legislature for fees for public business.

*Barristers and Attornies.*

By a rule of court recently remodelled, a person keeping *twelve terms* at home, or, six at home and attending during the sittings here *two years* (making twelve courts), may practise as counsel and attorney, the two characters being blended in this island.

No Court of Quarter Sessions is held in this island for the trial of petty offences.—1 Rep. W. I. C. 110.

## ST. VINCENT.

*St. Vincent* is one of the Caribbee islands in the West Indies, fifty-five miles west of Barbados. (1) It lies in  $13^{\circ} 10' 15''$  lat. and  $61^{\circ} 30' 51''$  long. (2) It is twenty-four miles in length and eighteen in breadth. It contains about 84,000 acres, and comprises five parishes. The capital is Kingston. (3) "The number of inhabitants appears by the last returns to government," says Mr. Edwards, "to be 1450 whites, and 11,853 negroes." (4) There are several small islands dependent on the St. Vincent government, the chief of which are Bequia, Union, Canouane, and Mustique. (5)

## HISTORY AND CONSTITUTION.

The Spaniards bestowed the name of St. Vincent upon this island, because they discovered it upon the 22d of January, which in their calander is St. Vincent's day. But it does not appear that they were ever, properly speaking, in possession of it, the Indians being very numerous here on account of its being the rendezvous of their expeditions to the continent." (6)

It was included with Dominica and many other islands, in a patent granted to James Hay, Earl of Carlisle, in the first year of King Charles I. (7)

In 1672, King Charles, by commission, appointed Lord Willoughby Governor of Barbados, St. Lucia, St. Vincent, and Dominica; (8) but it does not appear that St. Vincent was ever settled or occupied under this commission. It seems to have remained in the exclusive possession of the Charaibes, its original owners.

(1) Brookes's Gazetteer.

(2) Introduction to Shepherd's Practice.

(3) 1 Edwards, 426, 427.

(4) Ibid. 428.

(5) Ibid. 429.

(6) 1 Edwards (citing Campbell,) 410.

(7) Ibid, 407. See this patent more fully noticed under the tit. "Barbados."

(8) Ibid. 411, et seq.

About the year 1675, certain African negroes being wrecked on the coast of Bequia, were allowed by the Charaibes to settle themselves in St. Vincent, and afterwards becoming very numerous, disputed and divided with the native race the possession of this island. These intruders were afterwards known by the name of the Black Charaibes. (9)

In 1723, the British made a fruitless attempt to take possession of this island and of St. Lucia, by virtue of a grant that had been made by George I. to the Duke of Montague. (1)

St. Vincent afterwards continued to be the theatre of savage hostilities between the negroes and the Charaibes, in which the former proved ultimately victorious, and nearly exterminated their opponents. (2)

The French had constantly opposed the attempts that had been made to reduce this and other islands under the English dominion, and at length, by the treaty of Aix le Chapelle in 1748, the English abandoned their pretensions, and St. Vincent, Dominica, St. Lucia and Tobago, were declared neutral. (3)

But afterwards, by the treaty of Paris, signed the 10th of February, 1763, these pretensions were re-established, and St. Vincent, Dominica, and Tobago, were assigned to Great Britain in full and perpetual sovereignty, (4) the Charaibes not being once mentioned in the whole transaction. (5) The proclamation of the 7th of October, 1763, the letters-patent of the 9th of April, 1764, by which Representative Assemblies were granted to these ceded islands, and the contest consequent upon the attempt afterwards made to impose the  $4\frac{1}{2}$  per cent. duty on them, have been already fully noticed in the account of the colony of Grenada. To that account the reader is referred.

A separate Legislative Assembly was in pursuance of these authorities, summoned in each of the islands constituting the general government. The Assembly of St. Vincent was convened as early as 1767, the first act in the

(9) 1 Edwards, 411, 412.

(1) Ibid, 414 to 420.

(2) Ibid. 420.

(3) Ibid. 407, 408.

(4) This article of the treaty will be found in Loft's Reports, 660.

(5) 1 Edwards, 409.

printed collection bearing date on the 11th of July in that year.

This act makes mention of a Court of Common Pleas as then existing in this island; and the next act, which is under the same date, makes mention of Courts of General Sessions with criminal jurisdiction.

The British government proceeded, after the acquisition of this colony in 1763, to grant and sell large portions of its territory, but the commissioners for that purpose were directed not to dispose till further instructions should be given, of any such lands as were inhabited or claimed by the Charaibes, and after some contest with these people, a treaty was concluded with them on the 27th of February, 1773, by which they acknowledged His Majesty to be rightful sovereign of the island, and submitted themselves to his laws as far as regarded all their transactions with his subjects. And on the other hand, they received a portion of land for their residence, and permission to be governed in their own quarters and in their intercourse with each other, by their own customs. (6)

On the 19th June, 1779, St. Vincent was captured by a French force, but was restored to the dominion of Great Britain by the pacification of 1783. (7)

In this year, or the commencement of 1784, Edward Lincoln, Esq. was by His Majesty's commission, under the great seal, appointed "governor in chief over the islands of St. Vincent, Bequia, and such of the islands called the Grenadines, as lie to the northward of Carriacou in America;" and this continued up to a recent period to be the extent and style of the St. Vincent government. The commission will now of course be different, as a lieutenant-governor only will be appointed, the governor of Barbados being the governor in chief of that island, and of Grenada, St. Vincent, and Tobago. (See ante, 123.)

At least as early as 1784, the legislative authority of St. Vincent was again exercised (as before the French conquest) by the governor and council, and a representative assembly, and on the 22d of June in that year, an act was passed, whereby, after reciting the above commission, and that such of the Grenadines as lie to the northward of

(6) 1 Edwards, 421, 422, 424 413.

(7) Ibid. 425.

Carriacou, were now included and made part of the St. Vincent government, it is enacted that "every law, act, statute, and ordinance now in force in this island, shall, and they are hereby declared to extend to and operate in the said island of Bequia, and such other of the said islands called the Grenadines as lie to the northward of Carriacou in America, such of them and so far as they are applicable to the same."

On the 15th March, 1786, an act of Assembly passed for establishing Courts of King's Bench, Common Pleas, and Error, and for the better advancement of justice in the said Island of St. Vincent and the Island of Bequia, and such other of the Grenadines as lie to the northward of Carriacou in America, and for rendering the former proceedings of the Courts of Common Pleas and Error valid, and for settling certain fees." This act has since been explained and amended by several others. (8)

On the 7th of July, 1786, an act of assembly passed "for regulating the proceedings at elections, describing who shall be deemed freeholders capable of electing and being elected representatives, and for erecting into a parish the lands between the rivers Jambou and Byera, and to enable the inhabitants thereof, and of the other islands of Bequia, and such other of the Grenadines as lie to the northward of Carriacou in America, to elect representatives to serve in the general assembly of this government."

In 1795, an insurrection of the black Charaibes and French settlers took place in St. Vincent's, which being seconded by a French force, was not suppressed till after a severe struggle. But in 1796, the enemy was dislodged by a British force, and tranquillity restored. The Charaibes, however, were not allowed by our government to remain, but were removed to the island of Rattan, in the Bay of Honduras. (9)

On the 6th of November, 1807, an act passed for establishing a Court of Grand Sessions of the Peace, &c.

(8) See printed laws, vol. 2, p. 41, 80, 186. The Court of Chancery in this island derives its authority from the proclamation of 1763, and the go-

vernor's commission and instructions. 2d Rep. W. I. C. 10.

(9) 4 Edwards, 4, 74.

and several acts have been since passed to alter and amend the same. (1)

Since the establishment of the British dominion in 1784, this island has continued to be governed in the usual method, under commissions with accompanying instructions issued by the Crown to the successive Governors, and the legislative authority has been vested in those Governors, their Councils, and the House of Assembly, according to the ordinary form of colonial constitution. "In the frame of its government and the administration of executive justice," says Mr. Edwards, "St. Vincent's seems to differ in no respect from Grenada. The Council consists of twelve members, the Assembly of seventeen. The Governor's salary, exclusive of fees of office, is £2000 sterling, of which £1300 is a charge upon the fund arising from the duty of 4½ per cent. The remainder is by grant of the Assembly." (2)

The chief justice is appointed from England, receives His Majesty's warrant under the privy seal, and his commission passes under the great seal of the colony. He holds his office during the King's pleasure and his own residence in the colony. A colonial salary of £2000 currency per annum is settled on the present chief justice, so long as he shall fill the office and reside in the island. He is also entitled, in addition to his salary, to certain regulated fees. (3)

The puisne or assistant-judges are appointed by the Governor. They have no salaries, but some fees. They hold their places during pleasure. (4)

There is an Attorney-General, who is paid by a colonial salary of £500 currency, but this sum is said by the act to be allowed in lieu of fees, which are paid into the treasury, for conducting the business of the sessions, and drawing the acts of the legislature, which it is his duty to prepare on the requisition of any member. (5)

### *Barristers and Attornies.*

"It is usual in this island for the same persons to act as

(1) Printed Laws, vol. 2, p. 76, 115.

(2) 1 Edw. 428. The statement of the number of members composing the House of Assembly in St. Vincent's seems to be a mistake. By the Election Act of 1786, the number is

fixed at nineteen, whereof eleven are a quorum. And nineteen is the number mentioned in the Introduction to Shepherd's Practice.

(3) 2 Rep. W. I. C. 21, 50.

(4) Ibid. 21, 51.

(5) Ibid. 22.

counsel, attorney, solicitor, and proctor. It is not required that they should have been called to the bar in England." In the Court of King's Bench and Common Pleas the rule is that no person is to be admitted unless he has been entered in one of the Inns of Court in England or Ireland, and shall produce a certificate of having kept twelve terms. But this rule has been occasionally dispensed with. On production of a certificate that the applicant is an English barrister, the oaths are administered to him as of course. (6)

## COLLECTION OF LAWS.

Mr. Wyly, the chief justice, has stated that he supposes all the acts extant and in force to be in print. Two volumes of them have been published, and a third volume had proceeded in 1825 as far as page 20. (7) But it is doubtful whether they are complete. They begin, however, from 1767, when the House of Assembly was first established.

## GENERAL LAW OF THE COLONY. (8)

The laws in force in this island are stated to be, besides their own Acts of Assembly, so much of the laws of England, adapted to the circumstances of the colony, as existed prior to the proclamation of 7th October, 1763; and such Acts of Parliament passed since, as were expressly declared, or manifestly intended to apply to this island, as to the colonies in general. (9)

## COURTS.

The courts established in this island for the administration of civil justice, are the Court of Chancery, the Court of King's Bench and Common Pleas, and, as a branch of the superior court the Court of Complaints, the Court of Ordinary, the Court of Vice-Admiralty, and the Court of Error. There is no Court of Exchequer in this island. "A very few words by way of amendment," said the chief justice, "might be sufficient to give to the Court of King's Bench and Common Pleas all the necessary powers of a Court of Exchequer."

(6) 2 W. I. C. 54.

(7) Ibid. 5, 10.

(8) See the remarks, p. 3 to 16, on the general topic how far the co-

lonies are subject to the law of the mother country.

(9) 1 Rep. W. I. C. 5. And see, under title "Grenada," the remarks on the general law of that colony.

### *Court of Chancery.*

This court derives its authority from the proclamation of 1763, and the governor's commission and instructions.

The governor is sole chancellor.

The court has three masters (and examiners) appointed by the chancellor. The Colonial Secretary acts as Registrar, and the Provost Marshal as Serjeant-at-Arms.

The court is governed by the law and practice of the Court of Chancery in England, and by its own rules. When the latter are silent, the practice of the court in England uniformly prevails.

According to a book of practice, published by Mr. Shepherd, of the colonial bar, and recognized as authority in the colony, a defendant is entitled to three orders for time, the first for six weeks, the second for four, and the third for two weeks, if he is resident within the jurisdiction. If he resides in the other colonies, he may have one order only for three months. If he resides in Europe, the time is extended to six months, with liberty to add three more on motion, and on consenting to sequestration if an answer is not put in within the time.

A receiver is appointed by the court, and gives security in a recognizance before the master, in a sum specified by the court.

Costs are taxed by the master, according to the usual form in England.

An appeal lies from this court to His Majesty in Council, and must be made within fourteen days, and security is given on recognizance before the master effectually to prosecute the same. A copy of the papers authenticated by the officer of the court should be taken.—2 Rep. 10 to 12.

### *Court of King's Bench and Common Pleas.*

This, the supreme court of common law, was established by the Court Act, which passed in 1786, and is said to possess all the combined powers of the Courts of King's Bench and Common Pleas in England.

The pleadings subsequent to the declaration (and matters are often managed without a declaration) are *ore tenus*. When the plaintiff is absent, a power of attorney from



him to some person in the island, duly proved and recorded in the secretary's office, must be produced, if required, before the cause can proceed to trial or judgment. Foreign powers of attorney, under a notarial seal, and recorded, are sufficient. The person acting becomes liable for costs.

Process is served as in the other islands, by hammer and nail, in the case of defendant absentees, who have no attorney upon record, (see ante, p. 93 and n. 9.)

Depositions are receivable in evidence under the same circumstances as in the other islands, but they do not seem to be taken with equal care, and there never is sufficient circumspection. A summons left at the dwelling-house, *even of the counsel*, entitles the party to proceed in the absence of his opponent, and have the deposition taken *ex parte*.

A general venire issues, and *thirty-six* persons are summoned; of these two juries (called the *first* and *second* jury) are formed, and those juries are sworn, "once for all, for the court, and for the trial of all the causes on the list."

The party against whom a verdict has been obtained, has time until the next court, to move in arrest of judgment, or for a new trial.

To the judgment an affidavit is annexed, that the sum is due, which is lodged with the secretary, who enters the day, minute, and hour of filing it in the docket-book; and the judgment is binding on lands and slaves, and all property annexed to the freehold from that time.

The form of the writ of execution and its operation are the same as in the other islands.

Goods are bound in this island from the *teste* of the writ, and not from its delivery to the marshal. Executions are taken out and used as securities, as in the other islands, and though returnable to the secretary's office, at the end of *thirty days*, are allowed to be levied without suing out a scire facias, at any distance of time. Of real property the marshal executes a conveyance by lease and release, or often by feoffment (without livery) duly acknowledged and recorded in the registrar's office, either to the purchaser, or to a trustee for the purpose of settlement or barring dower. *Personal property* is transferred by the marshal's certificate, or by the sale only.

The fees, both of the judges and officers of the courts, are regulated by tables annexed to the acts.

Every verdict in this island carries costs, "meaning," (says Mr. Shepherd, in his book on practice,) "full costs." The common practice respecting executors and administrators is here extended, as they are generally subject to costs on a verdict passing against them." Costs are always taxed by the prothonotary. No costs can be levied without having previously been taxed.

#### *Court of Complaints.*

The Complaint Court (a branch of the superior court) in this island was established in 1786, by the 11th section of the Court Act.

Its jurisdiction is limited to actions under the value of £20 currency.

Proceedings in this court are *ore tenus*.—2 Rep. W. I. C. 10, 18.

#### *Court of Ordinary.*

A will in this island requires the same formality in its execution as in England. "For," says Mr. Shepherd, "although the legislature of the island of Grenada thought it necessary by a declaratory act to confirm the Statute of Frauds in the colony, *that* act has always, with the rest of the Statute Book to 1763, (excepting laws having a local or political operation,) been considered as the law of the island."

Wills are proved by affidavit made before the governor as Ordinary, by one of the subscribing witnesses, &c. Letters testamentary are issued by the registrar, and the will is entered in the books kept for that purpose, "but the original is not delivered out to the party as in case of deeds."—2 Rep. W. I. C. 18.

#### *Court of Admiralty.*

There is no Prize Court in this island. The course of proceeding in the Instance Court is by information to be filed by the Registrar, within ten days after the seizure. The monitions are issued to the marshal, who posts a copy at the custom-house, court-house, and principal tavern. An appeal did lie from a judgment in this court to the

High Court of Admiralty in England, 2 Rep. W. I. C. 18, 19; but now, by the Privy Council Act, it lies to the Privy Council.—See the Privy Council Bill, post.

*Court of Appeal and Error.*

Great complaints were made, from various quarters, of the vicious constitution of this court. "I presume," observed the chief justice, "no judge of the court, *a quo*, is to sit in this court; to constitute which the Governor and at least three members of Council are necessary."—"The judges of the court below," says Mr. Shepherd, "if members of Council, may *give their reasons* for their former judgments, but not *vote*."—2 Rep. W. I. C. 19.

*Criminal Court.—Grand Sessions.*

This court is constituted by an Act of Assembly, and is held on the second Tuesday in the months of February, June, and October, every year.

The members of Council are *virtute officii*, judges of this court; a circumstance which we heard lamented.

The court is further composed of the lieutenant-governor, the justices of the Court of King's Bench and Common Pleas, and the judge-surrogate of the Court of Vice-Admiralty. The judges sit by virtue of the act, without any further writ, commission, or authority.

The attendance of witnesses is secured by subpoena; but, even in criminal prosecutions in this island, depositions of witnesses may be taken, in case of sickness or intended departure from the colony, before the trial, and are declared to be admissible in evidence, under the same circumstances as in civil cases.

When a bill has been ignored, or when the prisoner has been acquitted, or is discharged by proclamation, and the court certify the prosecution to have been frivolous, vexatious, or malicious, the prosecutor is liable to the payment of costs, which are to be taxed by the Clerk of the Crown; and in all cases where the prisoner is unable to pay his fees, the court may direct them to be paid out of the treasury.

The court has a power to order transportation of offenders to some other part of the world, at their discretion.

*Judges.*

The chief justice receives His Majesty's warrant under the privy seal of the colony. He holds his office during the King's pleasure and his residence in the colony. The Governor has the appointment of the assistant justices. All the judges, holding their offices during pleasure, are removable by the authority of the Crown, and may be suspended by the Governor or Commander-in-Chief, by advice of the Council.—2 Rep. 22, 51.

*Provost Marshal.*

The provost marshal general is here, as in the other islands, the executive officer of all the courts. The chief justice said, "he *claims* a right of acting as marshal in the Court of Admiralty."

*Coroner.*

There is one coroner in this island, appointed by the Governor. The inquisitions are returned and filed in the office of the clerk of the crown, and the coroner is bound to make his return six days before the sessions.—2 Rep. W. I. C. p. 23.

*Admiralty Sessions.*

There is no commission sent out to this island for holding a Court of Admiralty Sessions.—2 Rep. 24.

## TOBAGO.

*Tobago* is one of the Caribbee islands in the West Indies. It is the most southerly of them, and lies in lat.  $11^{\circ} 10'$  north, and  $59^{\circ} 40'$  long. west from London—about forty leagues south by west from Barbados, thirty-five S. E. from St. Vincent's, twenty S. E. from Grenada, twelve N. E. from Trinidad, and between thirty and forty N. E. from the Spanish Main. It is somewhat more than thirty miles in length from N. E. to S. W.; between eight and nine in breadth; and from twenty-three to twenty-five leagues in circumference. (1)

It is divided into seven districts called divisions, viz. North East, Queen's Bay, Great River, Courland Bay, Barbados Bay, Rockly, and Sandy Point divisions. It has an equal number of parishes, which are named St. Andrew's, St. George's, St. Mary's, St. Paul's, St. John's, St. David's, and St. Patrick's. There are two towns, George Town, and Scarborough, the latter of which is the capital. (2)

### HISTORY AND CONSTITUTION.

This island was first discovered by Columbus, from whom it received its name. It was then inhabited by a native race of Indians, who being harassed in war by a hostile tribe on the continent, afterwards abandoned their homes and took shelter in St. Vincent's. (3)

The English visited this island very early, Sir Robert Dudley having been there in the reign of Queen Elizabeth. William, Earl of Pembroke and Montgomery, is said to have obtained a grant of this and two other small islands from Charles I. in 1628; but it does not appear that he took any steps to avail himself of the donation; and after continuing many years uninhabited, the island fell into the

(1) Encyclopædia Britannica; 4 Ed. 275. In the latter work it is said that it is twenty-five miles to the north of Trinidad, that the length is thirty-

two miles and the greatest breadth thirteen.

(2) 4 Edwards, 287.

(3) 1 Ibid. 276.

possession of the Dutch, who founded a colony there. But another settlement was soon afterwards attempted by the Duke of Courland, whose claims being contested by the States-General, the duke entered into a treaty with Charles II. dated 17th November, 1664, by which he put himself under the protection of that monarch, and consented to hold the island of him upon certain conditions.

Nothing, however, was done in pursuance of that treaty, and Tobago remained in possession of the Dutch. That nation was, in 1677, driven out by the French, and the island once more became uninhabited, the conquerors not chusing to establish themselves there.

The demise of the last of the Dukes of Courland, of the house of Kettler, which took place in 1737, put an end to all claims from that quarter; and by the treaty of Aix-la-Chapelle, 1748, Tobago was, with the islands of St. Vincent, Dominica, and St. Lucia, declared neutral. However, by the treaty of Paris, in 1763, Tobago, with St. Vincent's Grenada, and Dominica, was ceded in full sovereignty to the British crown, The English commenced the colonization of it in 1765. (4)

By royal proclamation, bearing date 7th October, 1763, it was declared that His Majesty had, by advice of his Privy Council, granted letters-patent under the great seal erecting within the countries ceded by the treaty of Paris four distinct governments, one of which was to be "the Government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominica, St. Vincent's, and Tobago," and that His Majesty had directed the governors of such governments to summon General Assemblies in the same. (5)

In pursuance of the above proclamation, a separate Legislative Assembly was convened in each of the principal islands, constituting the general government. That of Tobago was first convened in 1768—the legislative authority from 1763 to 1768 having been exercised by a Governor and Council only. In 1769 a Court of Common Pleas and Court of Error were established by Act of Assembly, but were afterwards superseded by an Act of 1775, providing a new establishment of Courts of Common

(4) *Encyclopædia Britannica* and Edwards, *ubi sup.* 276, 280.

letters-patent noticed more fully in the account of Grenada.

(5) See this proclamation and the

Pleas, Error, King's Bench, and Grand Sessions; and in the same year was passed an act for establishing a Court of Chancery.

In 1781 Tobago was taken by the French, (the capitulation having been signed on the 1st day of June in that year,) and by the treaty of 1783, it was ceded to France. Few Frenchmen, however, established themselves there, and the original colonists are said to have continued to cherish a strong attachment to the English government. (6)

On the 15th of April, 1793, the island was retaken by the British arms, and the small number of French settlers that it contained soon afterwards quitted the colony. (7)

In 1794, during the administration of Governor Ricketts, this island is said "to have received a constitution from England." "But the charter of the constitution is understood to be now lost." (8) However, its general nature appears by the preamble of the Act of Assembly, passed 21st February, 1794. This act recites that by the conquest of 15th April, 1793, "His Majesty acquired a right to establish such government, and to impose such laws on the inhabitants of the said island, as might be most agreeable to his royal will and pleasure;" and "had been graciously pleased to declare it to be his royal will and pleasure that the government of the said island should be a separate government, and consist of a captain-general and governor-in-chief, a lieutenant-governor or other commander-in-chief of the said island, for the time being, a Council appointed by His Majesty, and a House of Representatives of the inhabitants of the said island, under the denomination of a General Assembly;" and that a General Assembly had accordingly been chosen and convened. The act then proceeds to recite that "by the conquest of the island and the final establishment of the government thereof, as aforesaid, all laws heretofore enacted by former legislatures of this island, ceased to be in force," but it goes on to revive the act of 1775, above mentioned, for establishing Courts of Common Pleas, Error, King's Bench, and Grand Sessions; and also a former

(6) *Encyclopædia Britannica*; 4 Edwards, 285, 287.

(7) *Encyclopædia Britannica*; 4 Edwards, 286; 3d vol. p. 436, where

the capture is said to have been on the 17th April.

(8) 1 Rep. W. I. C. 71.

act for establishing a Registrar's Office; and provides that the records belonging to the former Registrar's Office shall be lodged in the new one. It has a like provision also with respect to the records of the courts of justice, which are transferred to the new courts respectively. (9)

In 1802 Tobago was ceded to France by the treaty of Amiens, but in July, 1803, was retaken by a British force, and was ultimately ceded to Great Britain by the treaty of Paris in 1814. (1)

Since this, its last restoration to the British Crown, the island enjoyed up to a recent period, as it did from 1794 to 1802, a separate and distinct government unconnected with any other colony, and possessed the same legislative and judicial constitutions as had belonged to it during that period. It now forms part of the general government of Barbados, but it is believed will still continue to have, as before, its separate House of Assembly, and separate judicial establishments.—See ante, 123, 124.

#### COLLECTION OF LAWS.

There is no complete printed edition, nor any compilation by authority, of the laws of Tobago. The originals are deposited in the Secretary's Office, where they may be consulted on payment of a fee. (2)

A collection, however, of the Acts of Assembly, passed from 1768 to 1775, inclusive, was printed in London in 1776, and many of the more recent acts are also in print. Copies of the acts of this, as of other colonies, are preserved in this country in the office of the Secretary of State for the Colonies.

#### GENERAL LAWS OF THE COLONY. (3)

Upon the examination of the law officers of Tobago, under the late commission for inquiry into the administra-

(9) The act has words which seem sufficiently to revive also the jurisdictions of the Courts of Chancery, Admiralty, and Ordinary. But there is no express revival of the act of 1775, establishing the Court of Chancery. It is, however, understood to have been revived by an act passed in Fe-

bruary, 1794. 1 Rep. W. I. C. 75, 76.

(1) 4 Edwards, 287; 1 Rep. W. I. C. 124.

(2) 1 Rep. W. I. C. 71, 122.

(3) See the remarks (ante, p. 3 to 16,) on the general topic how far the colonies are subject to the law of the mother country.



tion of justice in the West Indies, the chief justice thus expresses himself, "The common law operated in all cases not affected by colonial statutes. It has been considered that when we received an English constitution, in the time of Mr. Ricketts, we took with it all the acts of Great Britain, adapted to the circumstances of the colony. I presume that all English acts at the period of the cession, which are applicable to the colonies, are in force here, and all acts since passed in which they are specially included."

The Attorney-General states, "I apprehend that the common law, in so far as applicable to the situations of this colony, together with the general statute law, till the treaty of Paris in 1814, when the island became an integral part of the British empire, is operative here. From that period, of course, we are only affected by such statutes of the British Parliament as are expressly extended to us." (4)

This colony is stated to have received a constitution from England during the administration of Governor Ricketts, in 1794, and is therefore supposed to have adopted with it, or at the period of the cession, all the Acts of Parliament of Great Britain suited to its condition and circumstances. The charter itself of the constitution is understood to be lost. The local acts now in force are certain Acts of Assembly passed before the capture of the colony in 1793, and revived in 1794, and acts passed since.—1 Rep. W. I. C. 71, 124.

#### COURTS FOR THE ADMINISTRATION OF JUSTICE.

The courts for the administration of civil justice in the island of Tobago, are the Court of Chancery, the Court of Exchequer, the Court of Common Pleas, the Complaint Court for the recovery of debts under £10, appointed by the Court Act; the Court of Ordinary, the Court of Escheat, and a special and occasional court—the Court-Merchant. (5)

The courts for the administration of criminal justice are the Court of King's Bench and Grand Sessions, and the Instance Court of Admiralty, and a Court of Quarter Sessions. There is also a special commission under which

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(4) 1 Rep. 124.

(5) 1 Ib. 72.

Admiralty Sessions may be held, as occasion requires; and the Governor has always the power of issuing a special commission of Oyer and Terminer.—1 Rep. W. I. C. 76.

#### *Court of Chancery.*

What was the original constitution of this court does not clearly appear; but it is stated to have been revived shortly after the capture of the colony, by an act passed in February, 1794. The Governor is now sole Chancellor, and is supposed to possess all the authority of the Lord Chancellor of England.—1 Rep. W. I. C. 76.

#### *Court of Exchequer.*

This court is recognized by the Court Act, and was therefore rather revived than established by Governor Ricketts in 1794, at which time a chief baron was appointed. No court, however, is known to have been held till the year 1815, when the appointment of chief baron, which had long been vacant, was again filled up, and puisne barons were appointed, and the court sat several days for the first and last time, in the case of Cohens, a defaulter. The authority of the court and its rules are alike unknown, as the charter of the constitution is missing, and no records of the court can be found in the island.—1 Rep. W. I. C. 79.

#### *Court of Common Pleas.*

This court derives its authority from the Court Act, and possesses the usual jurisdiction of the Supreme Civil Court in the colonies. A chief judge presides with three assistant-judges. The chief justice is appointed by the Crown, the assistant-judges by the Governor. All the judges did hold their offices during pleasure, but before the report was completed an alteration took place which the commissioners thus notice:—"The tenure of office of all the judges was during pleasure, but by the new Slave Act it is provided that 'the chief justice of the Court of Common Pleas for the time being, and two puisne judges to be appointed by his excellency the commander-in-chief for the time being, whose commissions shall be *quamdiu se bene gesserint*, shall be a court, &c.'"

The salary of the chief justice was £3000 currency, equal to £1200 sterling. By a late act it has been reduced. The fees and perquisites of the office are, upon an average, about £150 currency. The assistant-judges have no salary, and do not usually transact that part of the business which is remunerated by fees.—1 Rep. W. I. C. 79, 119.

The decisions in this court are almost entirely governed by the laws, usages, and practice of the courts in England. The Court Act prescribes certain rules for pleading, but very few; and when none are prescribed, the practice is governed by the practice in England. Actions are commenced by filing a declaration. Good service of process upon absent defendants who have no attorney upon record in the island, is by nailing up a copy of the declaration on the court-house door, and this applies equally to defendants who have never been in the island as to those who have just quitted it, (but see ante, 93.)

A habeas corpus is obtainable both by common law and by the statute. Special juries are known in practice here, and are struck in the same manner as in England.

Executions are taken out and suspended, and used as securities which are assignable, but the assignee must proceed in the name of the assignor. Executions bind from the delivery. The marshal is directed by the act to minute the time they come into his hands, and to levy in the order and course in which they are received. When the *person* is taken, there is no allowance in this island to a debtor, a prisoner in execution.

The verdict carries costs with it in all cases, except the costs are restricted by the Court Act.—1 Rep. W. I. C. 81, 82.

*Court of Complaints, called at Barbados Bench Actions.*

In this court actions are brought for sums under £10, and determined without a jury.

The sitting is regulated by the Court Act, and takes place the day preceding the holding of Courts of Common Pleas, with a limited power of adjournment. Complaints may be tried before any judge of the Common Pleas, but the chief justice generally decides them. One day com-

monly suffices for such business. The parties attend in person.

An account filed by the plaintiff, of which a copy is served on the defendant, with a summons, is a sufficient allegation of the plaintiff's demand, without a declaration.

The whole costs of a complaint, up to the judgment, are not more than 27s. The judge has a fee of 5s. or 5s. 6d.—1 Rep. 82.

#### *Court of Ordinary.*

This court is held under instructions from the Crown, before the Governor alone, having cognizance of probates of wills, letters testamentary, and licenses for marriage.

All wills are proved, and the originals are left with the registrar, and deposited in the office.

All marriages are by license of the Governor as ordinary, on an affidavit before the secretary.

The chief justice was not aware of any means by which separate maintenance can be obtained by a wife in this island; nor was it known what measures were used to compel payment of costs. There is no process of excommunication, and nothing had been heard of any proceedings as on a contempt.—1 Rep. W. I. C. 82, 83.

#### *Court of Admiralty.*

This court derives its power by commission from England. It has jurisdiction in this island only as an Instance Court; matters of prize being decided in other colonies, where a Prize Court is instituted.

There was no admiralty judge at the time the commissioners were in the island, and the business was "at a stand for want of a judge," though there were two cases ripe for trial against parties under prosecution for not making a return under the Registry Act. In other islands the chief justice of the Common Pleas is frequently also judge of this court.

Admiralty sessions may be held as occasion requires, under a commission then recently arrived from England, for the trial of piracy, murder, and other offences committed upon the high seas. But no court had, at that time, ever sat under the commission. Costs are said to be taxed in this court by the registrar, according to fees established by usage.

The registrar of this court gives no security.—1 Rep. W. I. C. 83.

*Court of Appeal and Error.*

This court "is established by the Court Act." The Governor and Council are the judges. Where any of these sat judicially in the court below, they only attend in the Court of Error to "give information."

The proceedings upon writs of error are attended with considerable expense. It is the same with appeals to His Majesty in Council, occasioned as the commissioners were told by the cost of taking out copies of papers.—1 Rep. W. I. C. 83.

*Court of Escheat.*

There is a Court of Escheat in this island. Cases of intestacy are not so frequent as formerly, but some occur every year. Slaves escheating are not considered as virtually freed.

CRIMINAL COURTS.

*Court of King's Bench and Grand Sessions.*

The Court of Grand Sessions is established by the Court Act, for the trial of all offences committed by white or free coloured persons.

The court is composed of all members of council and justices of the peace. The commission of the chief justice does not extend to this court. He sits in it with only the rank of a common justice.

The indictment is drawn by the Attorney-General, to whom a fee has been generally paid for this service by the public.

The case for the prosecution is opened by counsel (the Attorney-General), who is not confined to a mere statement of facts, but also makes observations. Counsel also address the jury on behalf of the prisoner.

The evidence sometimes is, and sometimes is not, summed up by the judges. The judgment is supposed to be final. The chief justice said he knew not to what court a writ of error could be taken, for there was no Court of King's Bench with a superintending power.

Prosecutors and witnesses are not allowed their costs and expenses.—1 Rep. W. I. C. 83, 84.

### *Court of Quarter Sessions.*

This court is directed to be holden on the third Tuesday in January, April, July, and October. The court has "leave to sit as long as it shall be necessary for hearing any business that may come before it," and is invested "with the same power as the Court of Quarter Sessions in England."—1 Rep. W. I. C. p. 72.

The Court of Quarter Sessions at Tobago is constituted similarly to those appointed to be held in Barbados, except that there is only one court established for the island. But, like them, it never sits; the business that should be done there being all transacted at the Grand Sessions.—1 Rep. W. I. C. p. 84.

### *Attorney-General.*

The Attorney-General of this island has no salary nor stated fees, and performs various important duties requiring his anxious and unremitting attention, without any compensation whatever. For drawing indictments and conducting prosecutions in capital cases, the fee has generally been paid by the public. The Attorney-General submits his account annually to the legislature, who deal with it in their discretion.

### *Barristers and Attornies.*

There is said to be a rule among the manuscript rules and orders "that every person admitted to act as counsel in the courts of this island, must have been called to the bar in England," but such a rule, if it exists, has not been acted upon. Formerly an examination of a candidate for the bar, previous to his admission, took place before the Attorney-General or other Crown lawyer, and the judges afterwards admitted to the bar of their respective courts such persons as produced testimonials of their sufficiency." Now, "the Governor exercises the right of admission," said the chief justice, "as we understood, under the King's instructions." They are admitted to act only "during pleasure," a form, it is said, directed by the in-

structions. The commissioners thought the propriety of such an admission "very questionable, as it affects the independence of the bar." They observed that if such a license was granted to act "during pleasure," it ought at least to be expressed "during His Majesty's pleasure."—1 Rep. W. I. C. 87.

With respect to attornies or solicitors, they do not constitute, in this island, a different branch of the profession. The same persons practise as barristers and as attornies, and are not required to serve a clerkship in the latter capacity.—1 Rep. W. I. C. 88.

#### *Justices of the Peace.*

The duties attached to the office of a justice of the peace, in this island, are the same as in England.—1 Rep. W. I. C. 88.

#### *Coroner.*

There are two coroners in this island, appointed and removable by the Governor. There is no act of the island directing inquests to be taken, either in the case of free persons or slaves. They are taken in the same cases, and the coroners pursue the same method as in England, as nearly as circumstances will permit. The coroner is guided in the performance of his duties by the laws of England.—1 Rep. W. I. C. p. 88.

## BRITISH GUIANA.

THE extensive and important colony of British Guiana is the next that claims our notice. This colony formerly consisted of three different divisions, Essequibo, Demerara, and Berbice. From the time of these colonies coming into the possession of England until very lately, Berbice constituted a separate colony; but Essequibo and Demerara had long been united. By a commission issued to Sir Benjamin D'Urban, dated 4th March, 1831, (see the commission, post,) he was appointed Governor of all the three colonies of Demerara, Essequibo, and Berbice, which were thenceforth directed to form but one colony, and to bear the name of British Guiana. These colonies, together with the islands of Trinidad and St. Lucia, being colonies acquired by conquest, were subject to the legislative power of the King in Council, (see ante, 4, 5, 6, and 22, 23). On the 23d April and the 20th June, 1831, Orders in Council were issued providing for the administration of justice in British Guiana, Trinidad, and St. Lucia, (see these orders, post,) and as the effect of the first order (though its operation has been for a time suspended by the second) was to unite these three colonies, so far at least as related to the administration of justice, some account of them will be given immediately after that of British Guiana.

*Demerara, Essequibo, and Berbice* are colonies situated in *Guiana*, which is a large country of South America, bounded on the east and north by the Atlantic Ocean and the river Oroonoko, on the south by the river of the Amazons, and on the west by the provinces of Grenada and New Andalusia. (1) The Dutch were lately in possession of the four establishments of Surinam, Essequibo, Berbice, and Demerara, which took their names from the rivers on which they are respectively situated, and together constituted what was called *Dutch Guiana*. (2)

(1) Encyclopædia Britannica.

(2) Les Trois Ages des Colonies, par De Pradt (1801), tom. i. p. 78. He afterwards observes, "Quatre divers peuples Europeens occupent

la Guyana, les Espagnols en remontant vers l'Orinoque, les Hollandois apres eux, les Francais plus au Midi, et les Portugais depuis qu'ils ont franchi l'Amazonc."—p. 150.



The three latter successively capitulated to the English on the 18th and 24th of September, 1803, and were ceded to them as a British possession by the convention signed at London, 13th August, 1814.

Dutch Guiana was formerly the property of the Crown of England, and the English had made settlements at Surinam; but of these settlements the Dutch made themselves masters in the reign of Charles II. to retaliate the conquest of New Holland; and by a subsequent treaty in February, 1674, they obtained a cession of all the English territories in Guiana in exchange for what they had possessed in the province now called New York. (3)

Stretching along the coast of the Atlantic, between the latitude of six and eight degrees north, and the longitude of fifty-seven and fifty-nine degrees west, lies that part of Dutch Guiana which contains the colony of Demerara, its dependent settlement of Essequibo, and the colony of Berbice. To the south-south-west the river Courantin separates this tract from Surinam; to the north-north-west the small inlet and stream of Moroko divides it from the Spanish territory on the right bank of the Oroonoko. Its length upon the coast, in a straight line, is about 160 miles, its breadth is not exactly ascertained, but is nearly twice its length, and reaches to the scantily-known provinces of New Cumana and New Andalusia, which are claimed by the Spaniards, but which are in part inhabited by independent Indian tribes. The limits of Berbice, to the south-south-west, formerly extended no farther than to the Devil's Creek, but in 1799, they were enlarged by the addition of the lands between that creek and the river Courantin. The opposite boundary of the colony, where Demerara commences, passes from the mouth of Abary Creek in a straight line to the southward. Between this line and a similar one, drawn from the Boarisiree Creek at the mouth of the Essequibo river, is included the colony of Demerara. The dependency of Essequibo occupies the rest of the territory as far as the Spanish frontier on the Moroko.—4 B. Edw. 241, 242.

The principal rivers which water this district are the Essequibo, the Demerara, the Courantin, the Berbice, the Canje, and the Pomaroon. The first of these rivers

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(3) Bancroft's Hist. Guiana, p. 6 to 10.

is by far the largest. It runs a course of nearly 400 miles, receives many considerable streams, is thickly studded with islands, and where, through four mouths it empties its waters into the sea, it is twenty-one miles in breadth. The Demerara and the Courantin stand next in point of size. They are all navigable, and the chief of them is so to a considerable distance. The entrance to them is, however, somewhat difficult, in consequence of the bars of mud which have been formed by the deposits from their waters.—4 B. Edw. 243. Large ships usually discharge and take in part of their cargoes outside of these shoals. *Lang v. Anderdon*, 3 B. & C. 495.

Cotton, sugar, and coffee are the staple articles of these colonies. Rum is of course manufactured to a great extent, and from the care which is taken in the distillation, it is in high repute in the American market. Several sorts of timber, fit for ship and other building, and for ornamental uses, are produced here, and large quantities of mill timber for the erection of sugar works, are exported to the islands. The forests are also capable of nearly, if not entirely, supplying the home consumption of shingles, hoops, and staves. Rice may be raised in many parts with as much success as in Carolina, and the Savannahs are admirably calculated for the fattening of oxen, which are in plenty, as are likewise sheep, goats, and swine.—4 B. Edw. 244, 245. Ground provisions are plentifully grown here, and the fruit of the plaintain tree is most abundant.—Demerara Local Guide for 1833.

#### HISTORY AND CONSTITUTION.

Berbice was first settled as early as the year 1620; Essequibo the next, and Demerara the last. For many years their culture and commerce were in a languishing state. Demerara, however, had gained so much the start of Essequibo, that, in 1774, the seat of government was removed from the latter, and Stabroek was founded. From that period Essequibo, which had hitherto been the principal, became a dependency of Demerara. In the year 1763, a rebellion of the slaves took place in Berbice, but was suppressed after considerable exertion. Great numbers of the negroes were slaughtered. Those few who escaped have since occasionally been joined by fugi-

tives from the estates, and these men are known by the name of "bush negroes." Six years subsequently to this rebellion, Berbice was exposed to another calamity. The woods on the coast were set on fire, a crime which was attributed to the rebel negroes, and the conflagration progressively extended from the river Courantin to the Demerara, destroying the forests and devastating several rich plantations. In the year 1785 these colonies were reduced by a small British force, but they did not long remain in the possession of their new masters, they being captured by the French in the succeeding year. By a convention signed at London on the 13th August, 1814, Demerara, Essequibo, and Berbice, became a part of the British dominions. Since then the prosperity of these colonies has experienced a rapid increase, and is still gaining ground, so that the produce raised, and the shipping employed, now equal in value and number more than one-third of the produce and shipping of the long settled and flourishing island of Jamaica.—4 Edw. 249.

Stabroek, or George Town, the capital of Demerara, is situated in 6° 50' north latitude on the east side, and near the mouth of the river, which gives name to the colony. It is of an oblong form, about a quarter of a mile in breadth, and a mile in length; it stands on a low and level site, and the principal streets are perfectly straight, with carriage roads. The houses are of wood, two or three stories high, and raised on brick foundations. In the public buildings there is nothing which merits a particular description. Kingston, Labourgade, Bridge Town, New Town, and Cumingsburgh, are villages in the vicinity of Stabroek. They all owe their erection to the British.

The former capital of Berbice, called Zealandica, or Old Amsterdam, was built about fifty miles up the river, by the first settlers. In process of time, however, as the colony grew more peopled, and cultivation became more extensive, this situation was found to be subject to great inconvenience, from the difficulty with which vessels are worked up the winding river, and the frequency with which they grounded on the numerous muddy shoals, whence it was sometimes impracticable to get them off till they were set afloat by the rising of the spring tides. It was accordingly resolved to remove the seat of government to a more suitable spot, within a mile of the sea. This resolution was carried into effect in the year 1795.

At the confluence of the Canje with the Berbice, a town was there laid out which was called New Amsterdam.

The powers of government were said by Mr. Edwards (4 vol. 251,) to reside in the governor and a council called the College of Kiezers. This seems not now to be the case (see the commission to General D'Urban, post). The Court of Policy appears at present to be the recognised local legislature of the colony, and the College of Kiezers is in some respects a part of that legislature. The commission above referred to declares that the bodies politic heretofore existing shall be preserved, but that the number of members of such bodies politic shall be augmented "as by your said instructions is directed in that behalf." Those instructions have not been laid before the House of Commons, and are therefore not accessible. As the institution of the college of Kiezers, or that of the Court of Policy, is but little known in this country, it may be as well to give a short description of both of those bodies, as well as of the origin of the Financial Representatives. The college of Kiezers appears somewhat to resemble an electoral college in France. It is not the legislative body, but, as its name signifies, (the college of Kiezers, being literally, the college of Choosers,) it chooses or elects the legislative body. Yet the very small amount of its numbers, and the fact that the members of the college of Kiezers do not become members in right of any previously ascertained "qualification" in our English sense of the word, but are actually elected by the inhabitants at large, deprive it of its exact resemblance to the electoral colleges. The Court of Policy, anciently called also the Council, seems to have been nothing but an executive and administrative board, assisting the Governor in the discharge of his duties, and composed of the four chief servants of the Dutch West India Company and four inhabitants chosen by the college of Burgher Officers or Kiezers. The Court of Policy was afterwards made by the terms of the capitulation to the English in 1803, (see ante, p. 26,) a local legislature, and seems to unite the functions, except as to the levying of taxes, of the English Houses of Lords and Commons, and of the Privy Council. The Financial Representatives resembled, in having the direct power of taxation in their hands, the English House of Commons, but resembled it in that respect alone, for the power of making laws was not given to the Financial

Representatives whose authority was expressly limited to "the purpose only of raising, in conjunction with the Governor and Court of Policy of the said colony, the colonial taxes," and of examining the accounts.

The following sketch of the history of these three bodies is the best that the author has been able to meet with. It is extracted from the Local Guide of British Guiana for the year 1833, and seems to have been drawn from authentic sources.

In 1732, the constitution of Berbice, then a proprietary government, (as to which see ante, p. 17,) was enacted by the States-General to be as follows:—The government was to be administered by a Governor and Council; the Governor to be appointed by the Directors of the Dutch West India Company, under a commission from the States. The Council to consist of six persons, to be chosen by the Governor out of twelve nominated in the first instance by the inhabitants, afterwards by the remaining Council. The Court of Criminal Justice to be appointed by the Council or Court of Policy. The Court of Civil Justice to consist of the Governor and six members selected by him from twelve nominated, half by the Court of Policy, half by the inhabitants, three members to retire every two years—the Governor to have but one vote. The Court of Policy to take precedence of the Court of Justice, and individual members from the date of their appointment.

In 1739 the first constitution of the college of Kiezers, appears to have taken place at the company's establishment in Demerara, although the formal grant of the settlement by the chamber of Zealand is dated in 1745-1746. By the terms of this grant Demerara was subjected to the jurisdiction of the elder colony of Essequibo. In 1773 the Courts of Policy and of Criminal and Civil Justice were first established in Demerara, at an island about twenty miles up the river, called the Borselen. The courts consisted of the Commandeur (governor) of Demerara, the Commandant (chief military officer under the governor), the Fiscal, the Vendue Master, and four inhabitants, selected from a return of twice that number, made by the College of Burgher Officers, exercising similar functions to the Kiezers of Essequibo. In 1776 the Assembly of Ten, in Holland, passed an act declaring "that the College of Kiezers is not considered a judicial

body, but as electors of burgher representatives in council," and another of 1778 stated "that the Kiezers, not being in the pay of the company, are not required to watch the interests of the company, but those of the colony only." In 1785, on the restitution of the colony to the Dutch, the Courts of Policy of Demerara and Essequibo were united at the former place. The inhabitants of Demerara petitioned the director-general, L'Espinasse, stating that on the taking of these rivers by the English, the Assembly of Ten released all their superior and inferior servants or ministers from their service or ministry, and that the said assembly now maintained that all the members of the then existing Court of Policy and Justice were included in such release, and in pursuance of such opinion, in resuming the possession and administration of these colonies, had assumed the appointment of three colonial members, viz. Joseph Bourda, Cornelius Overbroek, and Peter Van Helsdingen; that the second named having departed this life, and the other two having declined the appointment, caused three vacancies; that the director-general, by virtue of his instructions, had appointed Messrs. C. J. Hecke and F. C. Changuon, as two members, and for the third sent a nomination to the West India Company: Against all which the colonists protested:—1st. Because the colonial or burgher members, selected from a nomination made by the elective college, could not be comprehended under servants or ministers of the West India Company;—2d. Because the burgher members are expressly distinct from the servants of the West India Company, viz. by instructions of the Assembly of Ten, 22d March, 1773, Art. 6. "In all cases of importance, and in the execution and promulgation of the laws, ordinances and regulations now in force, on the enactment or publication of any new orders, the commandeur shall convoke the Council, consisting of—1st, the commandeur, —2d, the captain-commandant,—3d, the fiscal,—4th, the vendue-master, and four of the principal best informed and most respectable inhabitants; and that, previous to these four assumed members taking their seats, they shall be sworn in due form." That consequently the Courts of Policy and Justice consisted of the West India Company's servants (*Bediendens*) and four members assumed from among the burghers, which four could not be comprehended among the Company's servants, but retained their functions, especially as these functions were reserved to

them in the capitulations both to the English and French, in 1781 and 1782, and lastly, by the instructions of the West India Company of the 28th October, 1783, requesting them, as "the now existing Council of Demerara," to continue their functions, and take over the colonies from the commissioners of the King of France, wherefore they pray, &c. The Director-general referred the memorialists to the West India Company. On the 10th of July the inhabitants of Essequibo joined in this matter, and they all memorialized the States-General, who finally confirmed the right of the Kiezers.

On the 7th of September, 1812, Governor Carmichael issued a proclamation declaring the College of Kiezers of the united colony of Demerara and Essequibo to be no longer a distinct and separate institution, and directing that the College of Kiezers and the Financial Representatives should thenceforth be combined into and constitute one single college, and that the election thereof should be by other persons than those who had theretofore elected the said colleges. By a proclamation dated 21st July, 1831, Governor D'Urban announces that he had received instructions from His Majesty declaring that such proclamation of Governor Carmichael had never been confirmed at home, and that it was not authorized by the powers conferred upon him, and was therefore void; and further providing that these two public bodies shall again be separated, and shall again exercise their respective functions. In pursuance of these instructions, Governor D'Urban proceeds to "constitute and appoint a College of Kiezers of the colony of British Guiana, for the purpose of electing members to fill vacancies in the Court of Policy of the said colony." The college was to consist of seven Kiezers, to be elected for life. The Governor at the same time "constituted and appointed a body of Financial Representatives of the colony of British Guiana, for the purpose only of raising, in conjunction with the Governor and Court of Policy of the said colony, the colonial taxes to supply the sums required by the annual estimate previously prepared by the said Governor and Court of Policy, and of examining, in conjunction with the Court of Policy, the accounts of the colonial receiver-general for the preceding year." (4)

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(4) Since the date of this proclamation the Financial Representatives have been constituted in the manner there prescribed. The author has been

The body of Financial Representatives was to consist of six members, the term of whose services was to be for two years. All inhabitants of the colony possessed of twenty-five slaves or upwards were called upon to vote at the election of the members of the College of Kiezers and of the Financial Representatives.

In 1784, there was a resolution of the States-General that the Courts of Policy of Demerara and Essequibo should be united and hold all future sessions in Demerara alone. In 1812 all distinctions between the colonies of Demerara and Essequibo, whether of jurisdiction or otherwise, were abolished by proclamation of Governor Carmichael, the office of commandeur of Essequibo and the judicial establishment at Fort Island were discontinued, and the Court of Criminal and Civil Justice in both colonies were united in Demerara. The name of the capital was changed from Stabroek to George Town, and a board of police was appointed for its internal management. The first institution of the trial by jury in Demerara took place in 1818.

#### *Courts Criminal and Civil.*

The following account of the courts is taken from the report of the Commissioners of Legal Inquiry, and represents the condition of the colony at the time it was visited by them. The change in the judicial establishments of the colony are of such a recent date (see Orders in Council, post,) that it is not improbable questions may for some time arise upon decisions given under those formerly existing. It has therefore been deemed advisable to preserve this sketch of their nature and jurisdiction.

The courts established in DEMERARA for the administration of criminal and civil justice respectively, are, a Supreme Court for the trial of criminal and civil cases, and a Commissary Court for the trial of causes for sums under 600 guilders.

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informed that an important dispute has arisen as to the limits of their powers. They insisted, and with some shew of reason, that they were not constituted merely to go through the form of voting the estimates which had been previously prepared by the Governor and Court of Policy, but had a right to exercise their discretion in adopting or rejecting any portion of them. The Governor denied

this. The Financial Representatives insisted, and by withholding the supplies have for a time gained their point. The right thus claimed by them has not, however, been recognized by the home government; but it is to be hoped that as the colonists are in form allowed to elect a taxing body, its authority may not be so restricted as to render it useless if not ridiculous.



*Superior Court.*

The Superior Court of Demerara consists of a President and eight members, of whom four and the President must be present to constitute a court.

The President is appointed by the King, and removable at his pleasure. The other members are planters or merchants of the colony, elected by the College of *Kiezers*, who, when vacancies occur, return a double number, from which the Court of Justice makes a selection. They are obliged to serve, under a penalty of 3,000 guilders. In the month of May of every second year, one-third of these colonial members vacate their seats, beginning with the oldest member, and as their number is eight, three and two vacate every alternate second year.

*Commissary Court.*

The Commissary Court consists of two members of the Superior Court, who serve in rotation.

Any member of the court may be challenged, in the like manner as a jurymen, and should he not withdraw, on the exception of incompetency, the question would be decided by the court.

The colonial members of the same colony receive no salaries, but are entitled to and receive certain fees, which are stated to average from 400 to 500 guilders *per annum* each. They are also provided with board and lodging at the public expense at the colony-house during their attendance.

## COURTS AT BERBICE.

At BERBICE the administration of criminal justice is vested in the Governor and Council; and that of civil justice in the Governor and six members.

A Commissary Court and a Roll Court are also held at Berbice; the former by two members of the full court, for the trial of causes for sums under 600 guilders, the latter by one member of the same court for the interlocutory proceedings on the Roll, (5) which is termed *the instruction* of

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(5) Such as filing claim and demand, or declaration, answer, replique, and duplique, inventory of vouchers, exchange of vouchers, interrogatories for examination of witnesses, &c.

the cause. This member of the court is termed in France "*le Juge d'Instruction*." (6) The Court of Criminal Justice is composed of the Governor and six members, and, in cases of vacancy, the latter are selected by the Governor from a treble number presented to him by the remaining members.

### *Court of Civil Justice.*

The Court of Civil Justice is composed of the Governor and six members, of whom the Governor (as President) and four members constitute a court.—2 Rep. 2d series, W. I. C. 2.

The members of the latter court are elected by the Governor from a double number presented to him, as nominated by the Governor and Council. Three members retire biennially, and their places are supplied by others.

Any member may be recused for incompetency, enmity, consanguinity within the second degree, and for various other causes specified in the written law.

The emoluments and privileges to which those Berbice members are entitled, are enumerated, (2 Rep. 2d series, W. I. C. p. 52,) and it will be seen that they also, as well as the members of the Superior Court at Demerara, are entitled to board and lodging at the public expense during their attendance on the courts.

### LAWS. (7)

The laws in force in these colonies, as guaranteed by the articles of capitulation on their surrender to His Majesty's arms, on the 18th September, 1803, are the old law of Holland, peculiar vernacular laws, and the Roman law, *in subsidium*, particularly with regard to slaves.

The following is an extract from the "Register of Resolutions of their High Mightinesses the States-General

(6) At Demerara this Roll Court is held by two commissaries.

(7) See the remarks (ante, p. 3 to 16) on the general topic, how far the colonies are subject to the law of the mother country. The law by which British Guiana is chiefly governed is the Roman-Dutch law of the Seven United Provinces, (see ante, p. 23, and 2 Rep. W. I. C. 2d series, 3, 53, 54.) A

very able translation of "the Laws of Holland" has been published by Mr. Henry, who was some time President of the Superior Court at Demerara, and who afterwards went thither as a commissioner to inquire into and report the state of the Administration of Civil and Criminal Justice in the colony.

of the United Netherlands." It is dated 4th October, 1774, and is the authority by which the general law of Holland is directed to be followed in the colonies of Demerara and Essequibo.

*" Extract from the Register of Resolutions of their High Mightinesses the States-General of the United Netherlands. Dated 4th October, 1774.*

"That it shall be further enacted, as it is by these presents enacted accordingly, that all the laws of Holland in general, and more particularly all laws, statutes, resolutions, and ordinances of their High Mightinesses, or the Committee of Ten, with the approbation of their High Mightinesses, heretofore transmitted or hereafter to be transmitted to the Director-General and the Council of Essequibo, or to the Commandeur and Council of Demerara, shall be the rule of their judgments.

"That in matrimonial questions they shall be regulated by the ordinance decreed by the States of Holland and West Friesland, on the 1st of April, 1780: and in matters relating to hereditary succession, ab intestato, by the law of consanguinity, termed Aasdoms Veusterrecht, as contained in the decree of the States of Holland and West Friesland, dated the 18th of December, 1599.

"That in civil causes they shall be regulated by the manner of proceeding enacted by the Assembly of Ten; in criminal causes by the criminal ordinance and style of proceeding of the year 1570, so far as the constitution of the colonies will permit it; and that in every thing, not especially provided for, they shall have recourse to the written laws.

"And an extract of these resolutions shall be sent to the representative of His Highness and to the Directors of the West India Company in the Assembly of Ten, with orders to cause the foregoing regulations and further arrangements to be duly published."

(Signed) COCQ. D. HAEFTEN, Vt.

Conformably to the aforesaid  
Register.

(Signed) H. FAGEL.

As regards the question how far English Acts of Parliament are considered binding in these colonies, the President of Demerara said he considered all English acts

relating to the colonies as in force in Demerara, although passed before that colony belonged to the British government.

The members of the Court of Civil Justice at Berbice, stated that English acts were not generally considered as binding there. They enumerated the Navigation Acts, and those relating to the Slave Trade, as being in force in their colony. Proofs for the recovery of debts, under the British act 5 Geo. 2, are admitted in both colonies.—2 Rep. 2d series, W. I. C. 3.

### *Practice of the Courts.*

The pleadings in the Courts, both in criminal and civil cases, are carried on in the English language, under an order of His late Majesty when Prince Regent.

By a rule of the Superior Court in Demerara, it appears that a party is prohibited from being heard therein in person, and the President thinks it could not be done away with without much inconvenience. At Berbice also, by a rule of their courts, a party is required to appear by attorney; but (it was stated) he may, thus assisted, by leave of the court, be heard in person.—2 Rep. 2d series, W. I. C. 4.

In cases of error or misprision in pleading, relief is afforded by the courts, it being, as was stated to the commissioners, uncommon to quash all the proceedings on that account. This is termed "*Civil Relief*" in the Dutch law.

In neither colony does the Court state (said the examiners) the reasons of its judgments.—2 Rep. 2d series, W. I. C. 5.

In the case of a witness absent from the colony, his deposition on oath, attested according to the law of the country where made, is (said the President of Demerara) generally admitted without objection. The Fiscal doubted whether it could be obtained by any process issuing from the Civil Court. Where a witness is in the jurisdiction, but prevented from attending by sickness, his evidence is obtained by a process termed *enquête valetudinair*.

As regards powers of attorney to be acted upon in Demerara and Berbice, it appears that they are held valid if executed according to the laws of the country where made. It requires a special power to execute any deed conveying any interest in lands or houses, or an estate in the colony, but it is not necessary that such special power should be

recited in the deed itself. The deed, however, must recite the authority or power of attorney, as being of record in the registry.

When application is made to the court at Demerara to put off a trial on account of the absence of a material witness, an affidavit to such effect is (said the President) seldom called for. The court, however, requires to be satisfied that the evidence is material.

At Berbice the course appears to be always to require an affidavit in such case, and to examine into the materiality of the evidence.

Citation *ad valvas curiæ* (or *nail process*) is reckoned in Demerara good service, both in the case of persons who have quitted the colony without leaving any agent or attorney to represent them, and of those who, although they may have a property in the colony, have never been there. (8)

At Berbice, however, a distinction was drawn by the examiners, as to whether the claim was against real or personal property. In the former case it was said that the owner being absent and having no representative, the suit would be instituted generally against the proprietor or proprietors, representative or representatives, and service of process would be on the plantation; but if against personal property, recourse would be had to arrest and citation *ad valvas curiæ*, and served at the debtor's last domicile.

It was added, at Berbice, that it had not been the practice to consider persons holding property there as absentees.—2 Rep. 2 series, W. I. C. 6.

The Superior Court, in both colonies, has an equitable jurisdiction, though at Berbice the examiners seemed to think their court had no power to relieve in the case of a deed or instrument lost. In cases of fraud, palpable error, &c. the Governor, as representative of the Sovereign, is authorized, on petition, to grant a mandament of relief with *committimus* to the Court of Justice, where the matter is tried on its merits. It has also extensive jurisdiction over testamentary guardians and executors, where the interests of minors are concerned; obliging such parties, on suggestion of misconduct, to render accounts, which accounts are referred to the sworn accountant for

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(8) But as to the effect of this mode of service upon a judgment afterwards attempted to be enforced in this country, see ante, 93, and the cases there cited.

report, and afterwards approved or otherwise by the court.

Though trusts are enforceable in these courts, the President of Demerara said that they were not attended with all the rights and consequences which are given to them in the Courts of Equity in England.

The Superior Court has authority to appoint curators over the person and property of idiots, prodigals, and lunatics.

Though the writ of injunction is not known by name in these colonies, a remedy of a similar nature (termed *penal mandament* or *interdict*,) may be obtained by a party on petition, to restrain proceedings which he considers injurious to him.

When a witness is old or infirm, or about to leave the colony, and it is desired to preserve his testimony, he may be examined before a commissary of the court, whether a suit has been instituted or not. In the one case notice would be given to the defendant; in the other, to the party in future to be interested, for the purpose of permitting him to cross-examine.

The President of Demerara said, that he should require a witness so examined to be afterwards produced, if it were found practicable, provided either party wished it. This mode of taking evidence *de bene esse*, is termed in the Dutch law, *Enqueste Valetudinaire*, from the circumstance of the sickness or infirmity of the witness being the chief cause.

The Fiscal of Demerara seemed to doubt whether to obtain the testimony of such witness, it was not necessary that a previous suit should have been instituted.

It appears that there is no difficulty or intricacy in these colonies in the mode of transferring or conveying real or personal property, it being, on the contrary, simple and convenient. Should the subject be real property, it is conveyed before the judge of the Commissary Court, after a previous public notification in the Gazette, in order that any creditor of the party proposing to alienate or burthen it, may have an opportunity of noting his opposition and securing his debt. Moveable property may (said the Fiscal of Demerara) be conveyed or mortgaged in this manner, or by delivery. If moveable property (he added) be not mortgaged before the judge, and the mortgagor continue in possession, the same would be fraudulent against third persons.—2 Rep. 2d series, W. I. C. 7, 8.

There is no process in these colonies similar to the English writ of *habeas corpus*. A person illegally imprisoned would (said the President of Demerara) be discharged on petition to the court. The Berbice examiners said, that a party in such case might complain to the Governor, but if this commitment should take place by order of the Governor himself, the want of this writ would then be felt.

Foreign powers of attorney to recover, must, it would seem, be recorded. No time is limited in which parties may present their documents to be deposited or recorded.

The following is the course adopted by a debtor who wishes to escape personal arrest, or obtain release from prison by a surrender of all his property to his creditors:—He applies for a writ of *cessio bonorum*, which issues in England, and is sent to the colony for trial, when the court, after hearing parties, appoints curators, who take the property and act for the benefit of the creditors. The Governor, as representative of the Sovereign, has power (it was said by the examiners at Berbice) to issue this writ.

The following is the law of prescription in criminal and civil cases, as stated by the examiners at Berbice. Civil actions are prescribed by the lapse of one third of a century, but sentences in civil actions are prescribed or rather become superannuated by a lapse of five years; but a mandament (in the nature of a *scire facias*) may be obtained to sue execution decreed on them in court. Criminal actions are prescribed by a lapse of twenty years, except in cases of adultery, (9) when the prescription takes place in five years.—2 Rep. 2d series, W. I. C. 8.

Provision is made by the law in those colonies for protecting the rights of absent foreign creditors, in the case of a sale of an insolvent estate, the practice being to insert advertisements in the Gazettes of England and Holland three several times, six months before such intended sale, calling upon the creditors to appear before the court to file their claims; and the judicial sale never takes place under a

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(9) The law of Holland treats adultery as a public crime, and not as a civil injury. For the punishments in-

flicted in cases of adultery, see Henry's Van Der Linden, 354, et seq.

year from the time of sequestration.—2 Rep. 2d series, W. I. C. 9.

*President.*

The chief judge of Demerara, as we have before seen, is called "The President." He is a barrister, and appointed by the King, with a salary of £3000 sterling per annum, and his fees are accounted for to the government; he is also provided with a house and servants at the government's expense. At Berbice the Governor acts as president of the courts of justice. He is appointed Governor by the King's commission, but it appears by his answers to the commissioners that he presides in court by virtue of his instructions from the Secretary of State. He does not in the latter capacity receive any salary nor fees.—2 Rep. 2d series, W. I. C. 11.

*Fiscal.*

In the united colony of Demerara and Essequibo there are two fiscals (first and second), at Berbice but one.

The fiscals in the united colony are appointed and removable by the King, the lieutenant-governor having power to suspend or remove until His Majesty's pleasure be known; from this order an appeal would lie to the authorities in the mother country.

The fiscal at Berbice stated that he derived his appointment from the lieutenant-governor of the colony, and held it during his pleasure.

The powers and duties of the principal fiscal are very numerous and important, and at the same time differ in many points from those of a crown officer or attorney-general in the other West India colonies. He is, however, like them, a public prosecutor. He is, by virtue of his office, a member of the Court of Policy or Legislative Assembly of the colony, and is bound to give his advice to the court in all matters in which it shall be required. For a full account of his duties and privileges, see 2 Rep. W. I. C. 2d series, Appendix J. pp. 249, 250, 251.

The following are the emoluments of the first fiscal at Demerara, as stated by Mr. Herbert:—a salary of 25,000 guilders from the colony, a sum of 7,200 guilders from the



King's chest, and an allowance of 2500 guilders for house rent. His fees (which average about £300 a year) arise from the entry and clearance of vessels, permits to ship sailors, certificates, and registering of landed slaves. His present emoluments amount to £2700 sterling.—2 Rep. 2d series, W. I. C. 12, 13.

### *Second Fiscal of Demerara.*

This officer is appointed by His Majesty; he is the chief civil magistrate and head of police in the district of Essequibo, and his duties, among other things, are to take cognizance of all crimes, breaches of the peace, or of the laws and regulations of the colony, committed within his district; also to hear complaints of slaves against their masters and others, and of masters against their slaves, and to do justice between them in a summary way. (1) It is also his duty to see that the slaves on the plantations are furnished with a sufficient supply of clothing and other necessaries, and that they are comfortably lodged and properly attended to in sickness. The amount of his salary is stated by him to be 17,200 guilders per annum, of which 15,000 is paid from the colonial chest, and 2200 guilders from the King's chest; and that he receives no other emolument whatsoever.—2 Rep. 2d series, W. I. C. 13.

### *Colonial Secretary.*

This office is held in both colonies by warrant under the privy seal. There is no salary attached to the office of Colonial Secretary at Demerara, his emoluments consist of fees. At Berbice that officer receives a salary of £2000 sterling per annum, in lieu of fees, which are carried to the public account.

At Demerara it is not the practice to permit parties to have access to the registry of the acts, or to the original acts themselves, deposited in the secretary's office; but

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(1) By the Slavery Abolition Act no person but a special justice of the peace, appointed under that act, will in future possess any jurisdiction over the apprenticed labourers. But as the commissioners reported strongly in

favour of this branch of the Fiscal's office, it will probably continue to be exercised by him, not in the character of Fiscal, but under the authority of an appointment as special justice of the peace.

at Berbice, it appears that all parties may examine the registry, and even without fee or reward.—2 Rep. 2d series, W. I. C. 14, 16.

*Sworn Accountant.*

This office has been abolished by the Order in Council dated 23d April, 1831, (see post.) The duties of his office are in future to be performed by the vice-president of the court of criminal and civil justice of Demerara and Essequibo, and by the vice-president of the court of civil justice and of the court of criminal justice of Berbice. Those duties are to examine the accounts of persons holding trusts under the appointment of the court, either as sequestrators, curators, guardians, or trustees; to examine the claims filed against insolvent estates, and to report thereon, and on all matters of account referred to him by the court. The sworn accountant has no salary but is paid by fees.

There appears to be a diversity in the practice of the two colonies, as to the arranging the claims of creditors in cases of *præ et concurrentiæ*. At Demerara the court dictates its classification to its secretary. At Berbice the arrangement is made, in the first instance, by the sworn accountant, and submitted, with a report thereon, to the court, public notice at the same time being given to all parties.—2 Rep. 2d series, W. I. C. 16, 17.

*Advocate pro Deo.*

The original design of this office was to assist such persons in the prosecution or defence of their rights before the courts of justice as were unable, from their poverty, to pay the regular fees of counsel or attornies. From the answers, however, of the gentleman who holds the appointment at Demerara, and from the terms of his commission, with which he furnished the commissioners, it would appear that he is entitled to consider himself as a law officer of the crown, and the legal adviser of the Governor, as well as advocate *pro Deo*; and although, in practice it does not appear that he has frequently acted or been consulted in the before-mentioned capacity of law officer or adviser of the Crown, yet, as such a claim on his part may be found to clash with the duties of the first fiscal, the commissioners thought that some measure should be taken

to remove this seeming incongruity, the office of legal adviser to the Governor being generally considered as appertaining to the first fiscal.

At Berbice there is no advocate *pro Deo*, but it appears from the answers the commissioners received there, that the practice, in cases requiring such assistance, was to select for that duty one of the attorneys practising at the bar, who, if he succeeded, was entitled to costs from the opposite party.

The salary of this officer (paid out of the King's chest) at Demerara, is 7500 guilders per annum, and he is, besides, entitled to costs in case he succeeds, if by sentence of the court the defeated party should be condemned to pay costs.

The advocate *pro Deo* said that he did not consider himself authorized to undertake any cause *pro Deo*, without the authority of the Governor, or the court of justice, or the President.—2 Rep. 2d series, W. I. C. 17, 18.

#### *First Marshal.*

The first marshal at Demerara holds his appointment by virtue of letters-patent from His Majesty, and executes his duties by a deputy whose nomination has been confirmed by the court of criminal and civil justice. Till the year 1816, the nomination of the sub-marshals was with the court of justice; but by an order of the court of the 25th of April of that year, it was given to the first marshal.

At Berbice the person filling this office derives his authority from the appointment of the court of civil justice, and he performs its duties in person, assisted, however, by a second marshal in services out of the town.

In neither colony is any salary attached to this office; its emoluments arising solely from fees.—2 Rep. 2d series, W. I. C. 18.

#### *Drossart.*

This officer has the superintendence of the gaol, and the prisoners therein confined for criminal and civil offences, and for debt. He is appointed in each colony by the lieutenant-governor thereof. At Berbice this officer is also called under-sheriff and gaoler.

At Demerara the emoluments consist of a salary of 1500 guilders from the colony, and 1000 guilders from the

Crown, an allowance for house rent of 2200 guilders, and certain fees.

At Berbice the salary is 1200 guilders and fees.

In both colonies the duties are stated to be executed in person.

In Demerara a *cipier*, or sub-drossart, is appointed by the Governor, and at Berbice there are six *dienaaren*, or subordinate officers of justice, employed to assist the drossart.—2 Rep. 2d series, W. I. C. 19.

#### *Counsel, Attornies, and Notaries.*

The practitioners of the law in Demerara are divided into practitioners in full (i.e. persons acting both as advocate and attorney,) and attornies and solicitors, the last being permitted to practise only in the Commissary Court. A person called to the bar in England, Ireland, or Scotland, or who has taken a degree in law in any university, is admitted, without examination, to practise; but persons not so qualified are examined by the President as to their fitness. The President added, that no practitioner in full had been admitted to the courts since his arrival in the colony. The fiscal of Demerara, in answer to the first question under this head, stated, that there were certain rules in this matter, which, however, were never observed, and that an idea had generally prevailed that an English barrister could not practise in that colony, except through courtesy. He observed, however, that an English or Irish barrister, or Scotch advocate would be permitted, without examination, to practise at the bar there. At Berbice it appears that there are no counsel (properly so called) the attornies at the bar being employed and acting as such. They are admitted by the court as licentiates, without being required to show that they have been called to the bar in England, Ireland, or Scotland, or taken a degree in a foreign university. They usually, however, produce to the court certificates from a professional man as to their ability and character.

The examiners at Berbice also stated that sometimes the admission of attornies to their courts was only provisional, *ad tempus*, to enable the court to judge of the capability of the party applying.—2 Rep. 2d series, W. I. C. 21, 114, 115.

*Court of Admiralty.*

There is an Instance Court of Vice-Admiralty in each of these colonies, having jurisdiction over cases of smuggled goods, questions of right of property in vessels, disputes between masters and seamen, and breaches of the laws of navigation and trade. The power of trying prize causes is withheld from them; the judges of these courts are appointed by commission under the great seal of the High Court of Admiralty in England; the judge at Demerara (who is indeed the same gentleman who holds the office of president of the courts) performing the duties in person, while the Berbice judge executes the office by deputy.

These judges enjoy no salary, but are paid by fees, which in Demerara are estimated at an annual average amount of £60 sterling. On the commissioners inquiring what was the average at Berbice, the deputy-judge surrogate informed them that they could not be ascertained, as there had been no suits there for the last three or four years.

The officers of these Vice-Admiralty courts, respectively, are a King's advocate, a registrar, and a marshal. On inquiry at Demerara, by whom these officers were appointed, the judge informed the commissioners that they had up to that time been gazetted by the Governor on the nomination of a judge, and the nomination confirmed at home by the granting of a commission.—2 Rep. 2d series, W. I. C. 24.

*Criminal Court.*

The first fiscal is the public prosecutor, under the Dutch law, at Berbice; he receives 30,000 guilders per annum in lieu of costs chargeable by him against the colony for criminal prosecutions. At Demerara, if the criminal be condemned, and he has the means to satisfy the costs, the fiscal says he receives the fees from him, but not otherwise. The Governor, it appears, has the power of *politica custodia*, with a view to prosecution or political banishment.

The prisoner's counsel, it appears, is furnished with co-

pies of all the documents to be used at the trial, and a sight of the originals.—2 Rep. 2d series, W. I. C. 26.

Counsel are assigned to those prisoners, free or slaves, who, being too poor to fee counsel, apply to the court for that assistance.—2 Rep. 2d series, W. I. C. p. 27.

A majority of the court, consisting at least of *five*, must concur before a criminal sentence can be passed.—2 Rep. 2d series, W. I. C. 28.

By virtue of instructions sent out by the King of England, in 1821, to the Governors of both colonies, no punishment can now be inflicted there which cannot be inflicted under the English law.—2 Rep. 2d series, W. I. C. 29.

The sentence of the court in all capital cases, at Demerara, is communicated to the Governor before being carried into execution. In cases of severe corporal punishment this was not considered necessary, unless required by the Governor; but since the above mentioned order, prohibiting punishments not allowed by the English law, the fiscal said he conceived it to be necessary that the Governor should be made acquainted with the nature of such sentence, and stated his determination to act accordingly. At Berbice, it will be remembered, that the Governor is president of the criminal court.

In the Governor, as representative of the King, is lodged the power of reprieve; he has also, by his instructions, the power of pardoning in all cases except for treason or murder.—2 Rep. 2d series, W. I. C. 30.

#### *Orphan Chamber.*

The duties of this department, as stated by the examiners at Demerara, consist in taking possession of the property of persons dying intestate and other unrepresented property, and administering the same for the benefit of the creditors and heirs. At Berbice the power is claimed of having the superintendence of minor orphans, and over such persons as have become or are considered by the honourable council of government incapable of managing their own concerns, as also over all estates which devolve to it *ab intestato*.

The duties of the Orphan Chamber at Berbice are executed by five members with a greffier (or secretary), and at Demerara by a president, two members and a

greffier. The orphan board at Demerara is stated by the examiners to be under the superintendence of the court of justice, by which its members are elected for the term of two years. At Berbice the members are chosen by, and are under the control of the Governor and Council; they serve for a period of four years.

When estates fall under the administration of this board at Demerara, the practice is stated to be to insert in the Gazettes of this colony, and of London and Amsterdam, a notice to all parties interested, to file and substantiate their claims. Such appears to have been formerly the course at Berbice; but the greffier of the board informed the commissioners, that although such notice is always inserted in the English and colonial Gazettes, its publication in the Dutch Gazettes had fallen into disuse.—2 Rep. 2d series, W. I. C. 31.

### *Wills.*

It appears that the ancient law of distribution and descent *ab intestato*, as it prevailed in North Holland, is in force in these colonies, and that there is no distinction in this respect between personal and real property. Neither does it appear from these answers, that any complaint is made of the rules of descent or the power of disposing of property by will in the colonies. In fact, it will be observed, that the power given the parent of disposing of two-thirds of his property by will, when he has not more than four children, or of half, if they exceed that number, is much better adapted to the present state of society than the restriction by the Spanish law at Trinidad of the parent to one fifth.

The mode of proving private wills (i. e. wills not drawn or attested by a notary,) in these colonies is very simple, as they are merely exhibited to the Colonial Secretary for registration, and deposited with him, when, on seeing that the will has the proper number of witnesses affixed to it, he registers it, and gives off a *grosse* or notarial copy, which copy is received in the court as evidence. No further proceedings take place until a question really arises upon the validity of the will so registered, when it is determined before the court upon a regular pleading.

The solemnities requisite to the validity of a will in these colonies, are, that it should be signed in the pre-

sence of seven witnesses, males, or in the presence of a notary and two other witnesses.—2 Rep. 2d series, W. I. C. 34.

### *Mortgages.*

The doctrine of the Roman law, in these colonies, admits of tacit or legal mortgages, that is, mortgages without deed, and consequently unregistered. The ancient practice of securing debts due to the state, by the fiscal seizing, on the part of the Sovereign, the property of the debtor, in the way of an extent, was found so oppressive that their High Mightinesses regulated this proceeding by a *placaat*, authorizing the judge of the bankrupt's domicile to settle and rank the preferences and priorities of the claims of the several creditors, including those of the state, by the regular judgment of *præ* and concurrence, *ordinario modo*, retaining the privilege of the sovereign to a preference when properly established.—2 Rep. 2d series, W. I. C. 35.

### *Præ et Concurrentiæ.*

This is a process by the Dutch law to rank the claims and priorities of creditors on the real or personal estate of their debtors, when taken in execution or distributed under the control of the court. Great complaints have always been made in Europe by foreign creditors and mortgagees, of the delays experienced in the judgments of the *præ* and concurrence. The causes of their complaints may easily be remedied.—2 Rep. 2d series, W. I. C. 36.

### *Bankruptcy.*

It appears that there are no bankrupt laws in force in these colonies similar to those in England, nor any law by which the debtor can obtain a complete discharge. He is therefore obliged, in cases of insolvency, to have recourse to the *cessio bonorum*, which is a writ issuing from the sovereign or those to whom he has delegated that power, and is granted *ex debito justitiæ*, on the petition of the subject. The writ of *cessio bonorum* has nearly the same effect as the Insolvent Act in England, with the exception, however, that it is regulated by common law, and not like the latter by statute, and is only



conditional in the first instance, being granted with *committimus* to the judge of the debtor's domicile for final confirmation or rejection after hearing of the creditors.

At Berbice, which deserves serious consideration, it appears that a certificate duly obtained by the bankrupt in England would not protect him in these colonies against the claim of a colonial creditor who had not proved his debt under the English commission, but that the bankrupt would still be liable, although it is stated that the court at Berbice would give effect to the assignment.—2 Rep. 2d series, W. I. C. 37.

It appears that a colonial creditor, notwithstanding a previous and existing commission of bankruptcy in England, would still be at liberty, on obtaining a judgment against the bankrupt at Berbice, to attach and levy upon his property there, provided the commission and assignment thereunder had not been placed on record in the colony at the time.—2 Rep. 2d series, W. I. C. 38.

On this subject see also ante, 96, 97, and the report of *Odwin v. Forbes*, decided in Demerara, and published in Mr. Henry's Tract on Foreign Law, London, 1823.

#### *Costs.*

The present mode of taxing costs at Demerara was, it appeared, by the president's secretary, of which no complaints were made by the inhabitants to the commissioners while in the colony. At Berbice costs were taxed before the president after intimation to the opposite party, who had a power of appealing to the court.—2 Rep. 2d series, W. I. C. 38.

#### *Appeals.*

It appears that an appeal to the King in Council lies from the courts in these colonies, where the matter in litigation exceeds £500 sterling (which sum is calculated at Berbice at twelve guilders to the pound sterling), and that the costs of the suit are not added to the principal.

By the colonial regulations the appeal should be noted in the office of the secretary of the court within fourteen days from the date of the sentence, otherwise execution may issue; after which noting of appeal it is the practice to petition the Governor, as His Majesty's representative, for leave to appeal, and an order to take out authentic copies of the papers in the cause from the secretary's

office. The amount of the security generally required at Berbice for the due prosecution of the appeal, and to answer the condemnation of the Court of Appeal, is £500 sterling. No appeal is allowed from any plea or exception termed in the Dutch law *innominate*, that is not peremptory, nor from any interlocutory or provisional sentence, if reparable on the definitive sentence, or on the merits.

At Demerara, it appears that personal security in appeal, if good and sufficient, is accepted.—2 Rep. 2d series, W. I. C. 39, 40.

### *Arbitrations.*

The submission to arbitration is by a mode of proceeding in the Dutch law, termed an act of *willing condemnation*, rendered equally binding on the parties with a rule of court in England under the statute of William & Mary; for under this mode of proceeding the parties appear before two commissioners of the court, and consent to be condemned by the sentence of that court to abide by the award. And on the arbitrators having submitted the award for the confirmation of the court, this sentence of confirmation enables the party to proceed in execution.—2 Rep. 2d series, W. I. C. 40.

The following is the authority by which the three colonies of Demerara, Essequibo, and Berbice were united under one government:—

*Copy of the Commission of Major-General Sir Benjamin D'Urban, K. C. B., as Governor and Commander-in-Chief of British Guiana; dated 4th March, 1831.*

#### WILLIAM R.

WILLIAM THE FOURTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, To our trusty and well-beloved Sir Benjamin D'Urban, Knight, Commander of the Most Honourable Military Order of the Bath, Major-General of our Forces: Whereas, for divers good causes to us appearing, we have deemed it right that our settlements and factories on the northern coast of the continent of South America, comprising the united colony of Demerara and Essequibo and the colony of Berbice, should henceforth be united together, and should constitute one colony, in the manner hereinafter provided: Now know you, that we, reposing especial trust and

confidence in the prudence, courage, and loyalty of you, the said Sir Benjamin D'Urban, of our special grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint you, the said Sir Benjamin D'Urban, to be, during our will and pleasure, our Governor and Commander-in-Chief in and over all our settlements on the northern coast of the continent of South America, comprising all such territories and jurisdictions as have hitherto been comprised in the said united colony of Demerara and Essequibo and the said colony of Berbice respectively, with their respective dependencies, and all forts and garrisons erected and established, or which shall be erected and established within the same, and which settlements shall henceforth collectively constitute and be one colony, and shall be called "The Colony of British Guiana:" And we do hereby require and command you, our said Governor, to do and execute all things in due manner as shall belong to your said command, and the trust we have reposed in you, according to the several powers and directions granted to or appointed you by this present commission and the instructions herewith given to you, or according to such further powers, instructions, and authorities as shall at any future time be granted to or appointed for you under our signet and sign manual, or by our order in our Privy Council, or by us through one of our principal Secretaries of State: And we do further grant, direct, and appoint that the form of civil government heretofore by law established in the said united colony of Demerara and Essequibo, shall be and the same is hereby established in and throughout the said colony of British Guiana, and that all such bodies politic and corporate as have heretofore lawfully existed in the said united colony of Demerara and Essequibo, shall in like manner exist in and throughout the said colony of British Guiana, and shall in and throughout the said colony have, exercise, and enjoy all such powers and authorities as have heretofore been lawfully had, exercised, and enjoyed by them respectively in the united colony of Demerara and Essequibo: Provided nevertheless, and we do hereby declare our will to be, that the number of the members of certain of the said bodies politic and corporate heretofore existing in the said united colony of Demerara and Essequibo, shall in the said colony of British Guiana be augmented and enlarged in such manner as by your said instructions is directed in that behalf: Provided also, and we do further declare our pleasure to be, that nothing herein contained shall extend, revoke, or abrogate any law or lawful usage, or custom now in force in the said united colony of Demerara and Essequibo, or in the said colony of Berbice respectively, save only in so far as relates to the separate constitution and form of civil government heretofore established and in use in the said colony of Berbice, which said constitution or form of civil government we do hereby abrogate and dissolve, and do

declare that the same hath become and shall henceforth be extinct and merged in the government of the said colony of British Guiana: Provided also, and we do further declare our will and pleasure to be, that nothing herein contained extends or shall be construed to extend in anywise to alter or interfere with the provisions of a certain Act of Parliament passed in the fifth year of the reign of our late Royal Brother and predecessor King George the Fourth, intituled, "An Act to consolidate and amend the Laws for the Abolition of the Slave Trade," or to render legal any transfer or removal of any slave which would have been illegal if these presents had not been made, it being our pleasure that for the purposes and within the meaning of the said Act of Parliament, the said united colony of Demerara and Essequibo, and the said colony of Berbice, shall still continue and be distinct and separate colonies: And we do hereby give and grant to you, the said Sir Benjamin D'Urban, full power and authority, with the advice and consent of the Court of Policy of our said colony of British Guiana, to make, enact, ordain, and establish laws for the order, peace, and good government of our said colony, subject, nevertheless, to all such rules and regulations as by your said general instructions we have thought fit to prescribe in that behalf: Provided, nevertheless, and we do hereby reserve to ourselves, our heirs and successors, our and their undoubted right and authority to disallow any such laws, and to make and establish from time to time, with the advice and consent of Parliament, or with the advice of our or their Privy Council, all such laws as may to us or them appear necessary for the order, peace, and good government of the said colony, as fully as if these presents had not been made: And we do hereby grant to you, the said Sir Benjamin D'Urban, the custody of the public seal appointed for the sealing of all things whatsoever that shall pass the seal of our said colony: And we do hereby give and grant to you, the said Sir Benjamin D'Urban, full power and authority, in our name and in our behalf, but subject nevertheless to such provisions as are in that respect contained in your said general instructions, to make and execute in our name and under the public seal of our said colony, grants of waste lands to us belonging within the said colony to private persons for their own use and benefit, or to any persons, bodies politic or corporate, in trust, for the public uses of our subjects there resident, or any of them: And we do hereby give and grant unto you full power and authority, as you shall see occasion, in our name and in our behalf, to remit any fines, penalties, or forfeitures which may accrue or become payable to us, so as the same do not exceed the sum of £50 sterling in any one case, and to respite and suspend the payment of any such fine, penalty, or forfeiture exceeding the said sum of £50, until our pleasure therein shall be known and signified to you: And we do hereby give and grant unto you full power and authority, as you shall see occasion,

in our name and in our behalf, to grant to any offender convicted of any crime in any court, or before any judge, justice, or magistrate within our said colony, a free and unconditional pardon, or a pardon subject to such conditions as by any law in force in the said colony may be thereunto annexed, or any respite of the execution of the sentence of any such offender, for such period as to you may seem fit: Provided always, that in cases of treason or murder, no pardon, either absolute or conditional, be granted until the case shall have been first reported to us by you for our information, and you shall have received the signification of our pleasure therein: And we do hereby give and grant unto you, the said Sir Benjamin D'Urban, as such Governor as aforesaid, full power and authority, upon sufficient cause to you appearing, to suspend from the exercise of his office within our said colony any person exercising any such office under or by virtue of any commission or warrant granted or to be granted by us, or in our name or under our authority, which suspension shall continue and have effect only until our pleasure therein shall be signified to you: And we do hereby strictly require and enjoin you, in proceeding to any such suspension, to observe the directions in that behalf given to you in and by our said general instructions accompanying this your commission: And in case of your death or absence from the said colony, our will and pleasure is, that this our commission, and the several powers hereby vested in you, shall be exercised by such person as may by us be appointed to be our Lieutenant-Governor of our said colony, or by such person as may be appointed by us under our signet or sign manual, to administer the said government; but if at the time of such your death or absence, there shall be no person within our said colony commissioned to be such Lieutenant-Governor, or administrator of the government as aforesaid, then our pleasure is, and we do hereby direct that the senior officer for the time being in the command of our land forces within our said colony, shall take upon himself the administration of the government thereof, and shall execute this our commission, and the several powers herein, and in the aforesaid instructions contained; and if any such officer shall, during such his administration of the government, be suspended in the command of our said forces by any senior officer, then our pleasure is, that such senior officer shall assume the administration of the said government, and the execution of this our commission, and of the several powers aforesaid, and so from time to time as often as any such case shall arise: And we do hereby require and command all officers, civil and military, and all other our subjects, and persons inhabiting our said colony of British Guiana, to be obedient, aiding and assisting unto you, or to the officer administering the said government for the time being, in the execution of this our commission, and of the powers and authorities herein contained: And we do further declare our pleasure to be, that the changes established in

the constitution and form of civil government in the said colonies of Demerara and Essequibo, and of Berbice respectively, by this our commission, shall not take effect until this our commission shall actually have been by you received in our said colonies or one of them: And we do hereby declare, ordain, and appoint that you, the said Sir Benjamin D'Urban, shall and may hold, execute, and enjoy the office and place of our Governor and Commander-in-Chief, in and over our colony of British Guiana, together with all and singular the powers and authorities hereby granted unto you for and during our will and pleasure. In witness, &c. &c. Given at our Court at Brighton, the 4th day of March, 1831, in the first year of our reign.

By His Majesty's Command.

(Countersigned) GODERICH.

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Shortly after the colonies of Demerara, Essequibo, and Berbice had been united under one government the following Orders in Council were issued, abolishing the ancient courts, and appointing perfectly new judicial establishments, not only for the colony of British Guiana, but for those of St. Lucia and Trinidad. At the end of these orders will be found a summary of the alterations they have effected in the courts for the administration of justice in British Guiana, and this will be accompanied by the regulations established by the Governor and Court of Policy as to the appointment of Assessors and the jurisdiction of inferior Courts.

## GUIANA, TRINIDAD, AND ST. LUCIA.

*Copies of the Orders in Council of the 23d April and 20th June, 1831, for the Administration of Justice in British Guiana, Trinidad, and St. Lucia.*

At the Court of St. James's, the 23d day of April, 1831 ;  
Present, The King's Most Excellent MAJESTY in Council.

1. WHEREAS His Majesty's Court of Criminal and Civil Justice in Demerara and Essequibo, and His Majesty's Courts of Civil Justice and of Criminal Justice respectively in Berbice, and His Majesty's Courts of Criminal Trial, and of First Instance of Civil Jurisdiction respectively in Trinidad, and His Majesty's Royal Court in the island of St. Lucia, are respectively holden by Judges the majority of whom in each of such courts are persons unlearned in the law : And whereas it is fit that the said courts respectively should henceforth be holden by persons of competent legal education ; it is therefore ordered by the King's most Excellent Majesty, by and with the advice of his Privy Council, that henceforth the Court of Criminal and Civil Justice of Demerara and Essequibo, and the Court of Civil Justice and the Court of Criminal Justice of Berbice, and the Court of Criminal Trial, and the Court of First Instance of Civil Jurisdiction in the island of Trinidad, and the Royal Court of St. Lucia, shall be respectively holden by and before three judges and no more ; that is to say, each of the said courts shall be holden by and before the President for the time being of the Court of Criminal and Civil Justice of Demerara and Essequibo, and the Chief Judge for the time being of Trinidad, and the First President for the time being of the Royal Court of St. Lucia, or by and before the persons who, during the vacancy of any such offices, or during the absence or incapacity of any of the said judges, may have received a provisional or temporary appointment to act as and in the place and stead of any such judges or judge.

2. And it is hereby further ordered that no Judge in any of the several courts aforesaid, and no Vice-President thereof, shall be the owner of any slave, or shall have any share or interest in, or any mort-

gage or security upon any slave, or shall be proprietor of, or have any share or interest or mortgage or security upon, any land cultivated by the labour of slaves, or shall be or act as the manager, overseer, agent, or attorney of, for, or upon any plantation or estate cultivated wholly or in part by the labour of slaves.

3. And it is further ordered, that for the purpose of holding the respective courts aforesaid, the said three judges shall from time to time repair to the said respective colonies of Demerara, Berbice, Trinidad, and St. Lucia.

4. And it is further ordered, that two sessions at the least shall be holden in each year in each of the said courts, and that the times of holding such sessions in such respective colonies, and the duration thereof in each, shall be determined by proclamations to be from time to time for that purpose issued in the said respective colonies by the respective Governors thereof.

5. And it is further ordered, that the Governors of the said respective colonies shall, and they are hereby authorized to arrange with each other the times of holding such sessions as aforesaid in such manner as may best promote the administration of justice therein, and the common convenience of the said respective colonies; and in case of any difference of opinion between such Governors as to the time of holding any such sessions, or as to the duration thereof, the judgment of the Governor of British Guiana shall prevail and be observed until His Majesty's pleasure therein shall have been signified through one of his principal Secretaries of State.

6. And it is further ordered, that in each of the said courts the President for the time being of the Court of Criminal and Civil Justice of Demerara and Essequibo shall preside and take precedence over such other two judges as aforesaid; and the said Chief Judge of Trinidad shall in like manner, in each of the said courts, take precedence over the First President of St. Lucia.

7. And it is further ordered, that in each of the said courts the said three judges shall in all civil cases have, possess, exercise, and enjoy such and the same jurisdiction, powers, and authority in every respect as the present judges of the said courts now have or lawfully possess, exercise, or enjoy, and that the decision of the majority of such three judges shall in all civil cases at any time depending in either of the said courts, be taken and adjudged to be, and shall be recorded as, the judgment of the whole court.

8. Provided nevertheless, and it is further ordered, that upon the trial of any persons or person in any of the said courts for any crime or offence with which they, he, or she may be charged, three assessors shall be associated to the said three judges, in the manner thereafter provided for, which assessors shall be entitled to deliberate and vote



with such judges upon the final judgment to be pronounced in every such criminal case; and no person shall be convicted of any crime or offence, or adjudged to suffer any punishment by any judgment or sentence of any of the said courts, unless a majority of the total number of such judges and assessors shall in open court vote in favour of such judgment or sentence.

9. And it is further ordered, that in each of the said courts the said three judges and assessors shall in all criminal cases have, possess, exercise, and enjoy such and the same jurisdiction, powers, and authority in every respect as the present judges of the said courts now have or lawfully possess, exercise, or enjoy, and that the decision of the majority of the total number of such judges and assessors shall in all criminal cases at any time depending in any of the said courts, be taken and adjudged to be, and shall be recorded as, the judgment of the whole court.

10. And it is further ordered, that the Governor of each of the said colonies shall by proclamations to be by him from time to time for that purpose issued within the same, make and prescribe such rules and regulations as may be necessary to determine the qualifications of such assessors, the mode of convening them, the penalties to be inflicted on persons refusing to act as such assessors when thereunto lawfully required, and the mode of challenging such assessors, and what shall be lawful ground of challenge, and how the validity of any such challenge shall be determined, together with every other matter and thing which may be necessary to the effective discharge by such assessors of the duty thereby committed to them; and every such proclamation shall forthwith be transmitted by such Governor for His Majesty's approbation, and shall in the meantime, and unless disallowed by His Majesty, and until such disallowance shall be made known to such Governor, be of the same force and effect as if the same had been contained in this present order.

11. And it is further ordered, that none of the judges nor any Vice-President of either of the said courts respectively, shall be liable to challenge or recusation in or upon any action, suit, or proceeding, civil or criminal.

12. And it is further ordered, that during the absence of any of the said judges from the colony to which he may belong, for the purpose of holding such sessions as aforesaid, the Supreme Court of such colony shall be holden by a single judge, to be called the Vice-President of such court, and it shall be the duty of such Vice-President to hear and determine all such interlocutory matters arising in or upon any civil or criminal suit, action, or proceeding depending in the said court, as may be brought before him, and also to inquire into and report to the said judges in any such sessions as aforesaid upon any questions which may

by such judges at such their sessions have been specially referred to any such Vice-President; and in the exercise of such jurisdiction, such Vice-President shall and he is hereby required to conform himself to and observe any such general rules or orders of court as may be made for his guidance in the manner hereinafter mentioned.

13. And it is further ordered and declared, that it shall be lawful for the said Supreme Courts respectively to review, reverse, correct, or confirm, as occasion may require, any judgment, sentence, rule, or order which may be made, given, or pronounced by any such Vice-President as aforesaid, in the exercise of the jurisdiction hereby vested in him, and that in the exercise of such jurisdiction, such Vice-President shall act alone and without any colleague or assessor, and shall have all such and the same powers and authority in that behalf as now are or is vested in the said courts respectively for the said respective purposes.

14. And it is further ordered, that it shall and may be lawful for the judges of the said courts respectively, and they are hereby authorized and required to make and establish such rules, orders, and regulations as to them shall seem meet concerning the forms and manner of proceeding to be observed in the said courts respectively, and the practice and pleadings in all actions, suits, and other matters, both civil and criminal, to be therein brought, and concerning the duties and jurisdiction of the said respective Vice-Presidents, and concerning the proceedings of the executive and ministerial offices of the said courts respectively, and concerning the process of the said courts, and the mode of executing the same, and concerning the admission of advocates, barristers, attorneys, solicitors, notaries, and proctors in the said courts respectively, and concerning all other matters and things which relate to the conduct and dispatch of business in the said respective courts; and all such rules, orders, and regulations, from time to time, to revoke, alter, amend or renew as occasion may require. Provided always, that no such rules, orders, or regulations shall be repugnant to this present order, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of the business of the said courts respectively, and that the same be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and be promulgated in the most public and authentic manner in the colonies to which the same may respectively refer, for fourteen days at least before the same shall be binding and take effect therein; and provided also that all such rules, orders, and regulations shall forthwith be transmitted to His Majesty, under the seal of the court, by the Governor for the time being of such colony, for his approbation or disallowance.

15. And whereas it may be expedient to establish within the said colonies courts having jurisdiction in civil cases of small amount and in

cases of breaches of the peace, assaults, and other petty offences ; it is therefore further ordered, that it shall be lawful for the Governor of each of the said colonies respectively, with the advice of the Court of Policy in the said colony in British Guiana, and with the advice of the Council of Government in the said colonies of Trinidad and St. Lucia, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish courts having jurisdiction in civil and criminal cases within the said respective colonies, provided that the jurisdiction of such Civil Courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of £20 sterling money, or wherein the title to any lands or tenements, or the title of any person to his or her freedom, or any fee, duty, or office may be in question, or whereby rights in future may be bound ; and provided also, that the jurisdiction of such courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death, transportation, or banishment ; and that it shall not be lawful for any such Criminal Court to inflict any greater or other punishment than imprisonment, with or without hard labour, for a term not exceeding three months, or fine not exceeding £20, or whipping not exceeding thirty-nine stripes, or any two or more such punishments within the limits aforesaid.

16. And it is further ordered, that the Judges of the said Supreme Courts of the said colonies respectively shall be and they are hereby authorized to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding to be observed in the said Petty Courts, and respecting the manner and form of carrying the judgments and orders of such courts into execution, with all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of such courts respectively, and such rules, orders, and regulations from time to time to revoke, alter, and renew as occasion may require.

17. And it is hereby further ordered, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in any of the said Supreme Courts of any of the said colonies, to appeal to His Majesty, his heirs and successors, in his or their Privy Council, against any final judgment, decree, or sentence of any of the said courts, or against any rule or order made in any such civil suit or action having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following ; that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £500 sterling ; or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim or demand to or question respecting property or any civil

right amounting to or of the value of £500 sterling ; or in case such judgment, decree, order, or sentence shall determine or affect the right of any person to his or her freedom, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence may, within fourteen days next after the same shall have been pronounced, made, or given, apply to such court by petition for leave to appeal therefrom to His Majesty, his heirs, and successors, in his or their Privy Council ; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, such Supreme Court shall and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may in each case appear to be most consistent with real and substantial justice ; and in case such Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order as His Majesty, his heirs and successors, shall think fit to make thereupon ; or in case the said Supreme Court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given, shall in like manner, upon any order for the suspension of any such execution being made, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order as His Majesty, his heirs, and successors, shall think fit to make thereupon ; and in all cases security shall also be given by the party or parties appellant, to the satisfaction of such court, for the prosecution of the appeal and for the payment of all such costs as may be awarded by His Majesty, his heirs and successors, to the party or parties respondent ; and if such last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then, and not otherwise, the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to His Majesty, his heirs, and successors, in His or their Privy Council, in such manner and under such rules as are observed in appeals made to His Majesty in Council from his plantations or colonies.

18. Provided always, and it is hereby declared and ordered, that nothing herein contained doth or shall extend, or be construed to extend, to take away or abridge the undoubted right or authority of His Majesty, his heirs and successors, to admit and receive any appeal from any judgment, decree, sentence, or order of any of the said Supreme

Courts, on the humble petition of any person or persons aggrieved thereby, in any case in which and subject to any conditions or restrictions upon and under which it may seem meet to His Majesty, his heirs and successors, so to admit and receive any such appeal.

19. And it is further ordered, that in all cases of appeal allowed by any of the said Supreme Courts, or by His Majesty, his heirs and successors, such court shall, on the application and at the costs of the party or parties appellant, certify and transmit to His Majesty, his heirs and successors, in his or their Privy Council, a true and exact copy of all proceedings, evidence, judgments, decrees, and orders, had or made in such causes so appealed, as far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court.

20. And it is further ordered, that the said Supreme Courts respectively shall, in all cases of appeal to His Majesty, his heirs and successors, conform to, execute, and carry into immediate effect such judgments and orders as His Majesty, his heirs and successors, shall make thereupon, in such manner as any original judgment or decree of the said Supreme Court can or may be executed.

21. And whereas there are in the said courts, or some of them, divers unnecessary officers, being or claiming to be entitled to fees of large amount for services by them rendered to suitors and others concerned in the proceedings of the said courts, to the great charge of His Majesty's subjects, and to the obstruction of the due administration of justice; it is therefore hereby ordered, that the office of Sworn-Accountant, as at present existing in Demerara and Essequibo, and in Berbice respectively, shall be the same and is hereby abolished, and that the duties heretofore performed by such sworn-accountants shall henceforward, but subject to the rules of court to be made as hereinbefore mentioned, be performed by the Vice-President of the Court of Criminal and Civil Justice of Demerara and Essequibo, and by the Vice-President of the Court of Civil Justice and of the Court of Criminal Justice of Berbice: and it is hereby further ordered, that the office of Father-General of Minors, and the office of Defender of the Absent, and the office of Depositario-General, and the office of Taxador, and the office of Judicial Referee, Liquidator, and Partidor, as at present existing in the said island of Trinidad, shall be and the same are hereby respectively abolished; and that the duties of the offices of the said Judicial Referee, Liquidator, and Partidor and Taxador, shall henceforward, but subject to the rules of court to be made as hereinbefore mentioned, be performed by the Vice-President of the Court of First Instance of Civil Jurisdiction of Trinidad: and it is further ordered, that the office of Curateur aux Successions Vacantes, and Regisseur des Biens des Absens, as at present existing in St. Lucia, shall be and the same is

hereby abolished; and that the duties heretofore performed by that officer shall henceforward, but subject to the rules of court to be made as hereinbefore mentioned, be performed by the Vice-President of the Royal Court of the Island of St. Lucia.

22. And whereas various jurisdictions have heretofore been exercised by certain courts in the island of Trinidad, which by reason of the changes introduced into the administration of justice therein, it is no longer necessary to retain; it is therefore hereby ordered, that the several courts or tribunals following, that is to say, the Court of Criminal Inquiry, the Court of Audiencia, the Complaint Court, the Court of the Alcaldes in Ordinary, and the Court of the Alcaldes de Berrio, and all offices in and connected with the said courts respectively, shall be and the same are hereby respectively abolished.

23. And it is hereby further ordered, that all orders heretofore made by His Majesty, or by any of his royal predecessors in his or their Privy Council, and all laws, customs, and usages now or at any time heretofore established or in force in any of the said colonies, so far as such orders, laws, or usages are in anywise repugnant to or at variance with this present order, shall be and the same are hereby revoked, abrogated, rescinded, and annulled.

24. And it is further ordered, that for the purpose and within the meaning of the present order, any person lawfully administering for the time being the government of the said colonies shall be deemed and taken to be the Governor thereof.

(Signed) C. C. GREVILLE.

At the Court of St. James's, the 20th day of June, 1831;

Present, THE KING'S MOST EXCELLENT MAJESTY in Council.

1. WHEREAS, on the 23d day of April, 1831, an order was made by His Majesty, with the advice of his Privy Council, for improving the administration of justice in His Majesty's colonies of British Guiana, Trinidad, and St. Lucia; and for that purpose it was thereby ordered, that the Chief Judges of the said three colonies should from time to time repair to the said colonies, for the purpose of holding in succession therein the Supreme Courts of such colonies respectively: And whereas unforeseen difficulties may arise to delay the execution of the said order, and it may be necessary to make provision for the administration of justice therein; in the meantime it is hereby ordered by the King's Most Excellent Majesty, by and with the advice of his Privy Council, that it shall and may be lawful for the Governors for the time being of the said colonies of British Guiana, Trinidad, and St. Lucia, or for any

two of them, by a proclamation to be by them issued in His Majesty's name in the said respective colonies, to suspend the execution of the said order of the 23d day of April, 1831, and the same shall thereupon be and remain suspended, until His Majesty's further pleasure shall be signified to the said respective Governors.

2. And it is further ordered, that during any such suspension of the said order of the 23d day of April, 1831, and no longer, the rules, orders, and regulations hereinafter made and contained shall be observed in the administration of justice in the said respective colonies; that is to say, in the first place, it is ordered, that henceforth the Court of Criminal and Civil Justice of Demerara and Essequibo, and the Court of Civil Justice, and the Court of Criminal Justice of Berbice, shall henceforth be holden by and before three judges and no more, and that the first or presiding judge of the said court shall be called and bear the style and title of Chief Justice of British Guiana, and that the second and third of such judges shall be called and bear the respective styles and titles of First Puisne Judge and Second Puisne Judge of British Guiana.

3. And it is further ordered, that the court for the trial of criminal prosecutions, and the Court of First Instance of Civil Jurisdiction in the island of Trinidad, shall henceforth be holden by and before three judges and no more; and that the first or presiding judge of the said court shall be called and bear the style and title of Chief Justice of Trinidad, and that the second and third of such judges shall be called and bear the respective styles and titles of First Puisne Judge and Second Puisne Judge of Trinidad.

4. And it is further ordered, that the Royal Court of St. Lucia shall henceforth be holden by and before three judges and no more; and that the first or presiding judge of the said court shall be called and bear the style and title of Chief Justice of St. Lucia, and that the second and third of such judges shall be called and bear the respective styles and titles of First Puisne Judge and Second Puisne Judge of St. Lucia.

5. And it is further ordered, that whenever and so often as the office of any chief justice or puisne judge of any of the said colonies shall become vacant by the death, absence, incapacity, resignation, suspension, or removal of any such chief justice or judge, the Governor of such colony for the time being shall be and is hereby authorized to supply and fill up such vacancy by the appointment of some proper person, by a commission under the public seal of such colony, which commission shall be made to continue in force only until His Majesty's pleasure shall be known.

6. And it is hereby further ordered, that none of the said judges of any of the colonies aforesaid shall be the owner of any slave, or shall have any share or interest in, or any mortgage or security upon any

slave, or shall be proprietor of, or have any share or interest in, or mortgage or security upon any land cultivated by the labour of slaves, or shall be or act as the manager, overseer, agent, or attorney of, for, or upon any plantation or estate cultivated wholly or in part by the labour of slaves.

7. Provided nevertheless, that nothing herein contained shall prevent any such judge from acquiring any such property or interest as aforesaid under any legal process, for the recovery of any debt or demand, or by testamentary or other succession, inheritance, donation, or other involuntary title, but all such property or interest as aforesaid which any such judge may so acquire, shall, within one calendar month next after the acquisition thereof, be by him communicated to the Governor of the colony, and shall be alienated and disposed of within six calendar months, unless His Majesty shall in any case be pleased to grant to any such judge a longer period for effecting any such alienation or disposal thereof.

8. And it is further ordered, that in each of the said courts respectively, the said three judges of the said respective colonies shall in all civil cases have, possess, exercise, and enjoy such and the same jurisdiction, powers, and authority, in every respect, as the judges of the said courts have heretofore lawfully possessed, exercised, or enjoyed; and that the decision of the majority of such three judges shall in all civil cases at any time depending in the said respective courts, be taken and adjudged to be, and shall be recorded as the judgment of the whole of such court.

9. And it is further ordered, that upon the trial of any person or persons in any of the said courts respectively for any crime or offence, three assessors shall be associated to the said three judges, in the manner hereinafter provided for, which assessors shall be entitled to deliberate and vote with such judges upon the final judgment to be pronounced in every such criminal case, or no person shall be convicted of any crime or offence, or adjudged to suffer any punishment by any judgment or sentence of any of the said courts, unless a majority of the total number of such judges and assessors shall in open court vote in favour of such judgment or sentence.

10. And it is further ordered, that in each of the said courts the said three judges and assessors shall in all criminal cases have, possess, exercise, and enjoy such and the same jurisdiction, powers, and authority in every respect as the judges of the said courts respectively have heretofore lawfully possessed, exercised, and enjoyed, and that the decision of the majority of the total number of such judges and assessors shall in all criminal cases at any time depending in any of the said courts, be taken and adjudged to be and shall be recorded as the judgment of the whole court.



11. And it is further ordered, that it shall be lawful for the judges of any of the said courts respectively to reserve the consideration of any question of law arising upon any such criminal trial as aforesaid, and to make order for the suspension or arrest of the judgment or sentence of the court, until the decision of such question of law, which shall be adjudged and decided by such judges alone, and without the concurrence or interference of such assessors therein.

12. And it is hereby further ordered, that the assessors of the said courts in Demerara and Berbice shall be chosen and appointed in such and the same manner as the members of the Court of Civil and Criminal Justice of Demerara have heretofore been chosen and appointed; and that the assessors of the said court for the trial of criminal prosecutions in Trinidad shall be chosen and appointed from and out of the members of the Cabildo of the town of Port of Spain in the said island; and that the assessors of the said Royal Court of St. Lucia shall be chosen and appointed in such and the same manner as the members of that court, other than the First President, have heretofore been chosen and appointed.

13. And it is hereby further ordered, that none of the judges of either of the said courts shall be liable to challenge or recusation in or upon any action, suit, or proceeding, civil or criminal, but that such assessors shall be liable to be challenged on such and the like grounds as may be alleged as lawful ground of challenge against any petit juror impanelled for the trial of any indictment in England, and the validity of every such challenge shall be decided by the judges presiding at any such trial, without the concurrence or interference of the assessors or any of them.

14. And it is further ordered, that it shall and may be lawful for the judges of the said courts respectively, and they are hereby authorized and required to make, ordain, and establish a tariff or table of fees, to be had, taken, allowed, and paid by the suitors in the said respective courts, for and in respect of every sentence, judgment, order, and proceeding which may be pronounced, made, or had in any suit or action depending therein, or which may or shall be paid or payable to any of the officers of the said court respectively, or to any advocate, barrister, solicitor, attorney, proctor or notary, or other practitioner of the law therein, and which tariff or table of fees shall, by the Chief Justice of each of the said courts respectively, be transmitted to the Governor for the time being of the colony to which such court may belong; and any such tariff or table being ratified and confirmed by any ordinance to be for that purpose made by the Governor and Court of Policy of British Guiana, or by the Governor, with the advice and consent of the Council of Government in the said colonies of Trinidad or St. Lucia, shall be binding upon all persons interested therein; and all persons receiving

any greater or higher or other fee or reward than shall by any such tariff or table be allowed, shall be liable to refund the same by such summary process or proceeding as shall seem good to the said courts respectively in that behalf.

15. And it is further ordered, that it shall and may be lawful for the said Governor and Court of Policy of British Guiana, and for the Governors of Trinidad and St. Lucia respectively, with the advice and consent of the respective Councils of Government thereof, by any ordinances to be by them for that purpose made, to prescribe the form and manner of proceeding to be observed in the said respective courts for the prosecution and trial therein of all persons charged with the commission of any crimes and offences cognizable within the said courts respectively: provided nevertheless, that every such ordinance shall be transmitted for His Majesty's approbation in the manner required by law in reference to all ordinances passed and enacted in the said respective colonies.

16. And it is further ordered, that it shall and may be lawful for the judges of the said courts respectively, and they are hereby authorized and required to make and establish such rules, orders, and regulations as to them shall seem meet, touching the distribution of the business of the said courts between the respective judges thereof, and concerning the forms and manner of proceeding to be observed in the said courts respectively, and the practice and pleadings in all civil actions and other civil matters to be therein brought, and concerning the process of the said courts and the mode of executing the same, and concerning the admission of advocates, barristers, attornies, solicitors, notaries, and proctors in the said courts respectively; all which rules, orders, and regulations shall be framed in such a manner as to promote, as far as may be, economy, method, and expedition in the despatch of the business of the said courts respectively; and the same shall be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and shall be promulgated in the most public and authentic manner in the colonies to which the same may respectively refer, for fourteen days at the least before the same shall be binding and take effect therein.

17. Provided always, and it is further ordered, that no such rules, orders, or regulations as aforesaid be repugnant to this present order, and that the same be forthwith transmitted under the seals of such respective courts to the respective Governors of the said colonies respectively, to be by them transmitted to His Majesty for his approbation or disallowance.

18. And whereas there are established within the said colonies, or some of them, courts having jurisdiction in civil cases of small amount, and in cases of breaches of the peace and other petty offences, and it is

expedient that provision be made for the better administration of justice in such courts; it is therefore hereby ordered, that no court within any of the said colonies other than the supreme courts hereinbefore mentioned, shall be competent to hold jurisdiction in any civil case in which the sum or matter in dispute shall exceed the amount or value of £20 sterling money, or in which the right of any alleged slave to his or her freedom, or the title to any lands or tenements, or any fee, duty, or office, or His Majesty's Royal Prerogative may be in question, or whereby rights in future may be bound; and that no court within any of the said colonies, other than the Supreme Courts aforesaid, shall be competent to hold jurisdiction in any criminal case wherein any person shall be accused of any crime punishable by death, transportation, or banishment; and that it shall not be lawful for any court in any of the said colonies, other than the Supreme Courts aforesaid, to inflict any greater or other punishment than imprisonment, with or without hard labour, for a term not exceeding three months, or fine not exceeding £20, or whipping not exceeding thirty-nine stripes, or any two or more of such kind of punishments together, within the limits aforesaid.

19. And it is further ordered, that it shall be lawful for the Governor of British Guiana, with the advice and consent of the Court of Policy thereof, and for the Governors of Trinidad and St. Lucia, with the advice and consent of the respective Councils of Government thereof, to establish, constitute, and erect within the said respective colonies, inferior courts having jurisdiction in civil and criminal cases within the limits aforesaid, and for that purpose may abolish any such inferior courts as may be now existing therein, or modify the constitution of such courts as may be found expedient.

20. And it is further ordered, that the judges of the said Supreme Courts of the said colonies respectively shall be and they are hereby authorized to make, ordain, and establish all necessary rules, orders, and regulations respecting the manner and form of proceeding to be observed in the said inferior courts, and respecting the manner and form of carrying the judgments and orders of such courts into execution, with all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of such courts respectively, and such rules, orders, and regulations from time to time to revoke, alter, and renew as occasion may require; provided always, that all such rules, orders, and regulations as aforesaid shall be promulgated, and shall be transmitted to His Majesty for his approbation or disallowance, in the manner hereinbefore directed and required with respect to the rules, orders, and regulations of the said Supreme Courts.

21. And it is further ordered, that the office of Father-General of Minors, and the office of Defender of the Absent, and the office of

Depositario-General, as at present existing in the island of Trinidad, shall be and the same are hereby respectively abolished ; and that the office of Taxador, and the office of Judicial Referee, Liquidator, and Partidor, as at present existing in the said island, shall be and the same are hereby consolidated, and shall constitute one office.

22. And it is further ordered, that the offices of Curateurs aux Successions Vacantes, and Regisseur des Biens des Absens, as at present existing in St. Lucia, shall be and the same are hereby abolished.

23. And whereas various jurisdictions have heretofore been exercised by certain courts in the island of Trinidad, which, by reason of the changes hereby introduced into the administration of justice there, it is no longer necessary to retain ; it is therefore hereby ordered, that the several courts or tribunals following, that is to say, the " Court of Criminal Inquiry," the " Tribunal of Appeal, in all cases of condemnation to death," the " Superior Tribunal of Appeal of Civil Jurisdiction," the " Tribunal of the Royal Audiencia," and all offices in and connected with the said courts respectively, shall be and the same are hereby respectively abolished.

24. And it is further ordered, that the Court of Sénéchaussée, in the island of St. Lucia, and all offices in and connected with that court, shall be and the same are hereby abolished ; and that the Royal Court of the said island shall henceforth have an original jurisdiction in all causes arising within the said island, in such and the same manner and to such and the same extent as such original jurisdiction was heretofore vested in the said Court of Sénéchaussée.

25. And it is hereby further ordered, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said Court of Civil and Criminal Justice of Demerara and Essequibo, or in the said Court of Civil Justice of Berbice, or in the said Court of First Instance of Civil Jurisdiction of Trinidad, or in the said Royal Court of St. Lucia, to appeal to His Majesty, his heirs, and successors, in his or their Privy Council, against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following : that is to say,

First, Such judgment, decree, order, or sentence shall be given or pronounced for or in respect of a sum or matter at issue above the amount or value of £500 sterling, or shall involve directly or indirectly the title to property, or to some civil right, amounting to or of the value of £500 sterling, or shall determine or affect the right of some alleged slave to his or her freedom :

Secondly, The person or persons feeling aggrieved by such judgment, decree, order, or sentence, shall, within fourteen days next after

the same shall have been pronounced, made, or given, apply to the court by petition for leave to appeal therefrom to His Majesty, his heirs, and successors, in his or their Privy Council :

Thirdly, If such leave to appeal shall be prayed by the party or parties who is or are adjudged to pay any sum of money or to perform any duty, the court shall direct that the judgment, decree, or sentence appealed from shall be carried into execution if the party or parties respondent shall give security for the immediate performance of any judgment or sentence which may be pronounced or made by His Majesty, his heirs, and successors, in his or their Privy Council, upon any such appeal, and until such security be given, the execution of the judgment, decree, order, or sentence appealed from shall be stayed :

Fourthly, Provided nevertheless, that if the party or parties appellant shall establish to the satisfaction of the court, that real and substantial justice requires that pending such appeal execution should be stayed, it shall be lawful for such courts to order the execution of such judgment, decree, order, or sentence, to be suspended pending such appeal, if the party or parties appellant shall give security for the immediate performance of any judgment or sentence which may be pronounced or made by His Majesty, his heirs, and successors, in his or their Privy Council, upon any such appeal :

Fifthly, In all cases security shall also be given by the party or parties appellant for the prosecution of the appeal, and for the payment of all such costs as may be awarded by His Majesty, his heirs, and successors, to the party or parties respondent :

Sixthly, The court from which any such appeal as aforesaid shall be brought shall, subject to the conditions hereinafter mentioned, determine the nature, amount, and sufficiency of the several securities so to be taken as aforesaid :

Seventhly, Provided nevertheless, that in any case where the subject of litigation shall consist of immoveable property, or of any slaves, stock, utensils, or implements, held therewith or attached thereto, and the judgment, decree, order, or sentence appealed from shall not charge, affect, or relate to the actual occupation thereof, no security shall be demanded either from the party or parties respondent or from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal; but if such judgment, decree, order, or sentence, shall charge, affect, or relate to the occupation of any such property, then such security shall not be of greater amount than may be necessary to secure the restitution, free from all damage or loss, of such stock, utensils, or implements, or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation of such property; and each of the said courts is hereby authorized and required to sequestrate any such immoveable

property, slaves, stock, utensils, and implements, in order still further to reduce the amount of such security, if the party or parties by whom such security is to be given shall make application to such court for that purpose, and the other party or parties shall not show good cause to the contrary :

Eighthly, In any case where the subject of litigation shall consist of money or other chattels, or of any personal debt or demand, the security to be demanded either from the party or parties respondent, or from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal, shall be either a bond to be entered into in the amount or value of such subject of litigation by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immoveable property or slaves (1) situate and being within such colony, and being of the full value of such subject of litigation, over and above the amount of all mortgages and charges of whatever nature upon or affecting the same :

Ninthly, In any case where the subject of litigation shall be the right of any alleged slave to his or her freedom, the amount of the security for the performance of the judgment or sentence to be pronounced and made upon any such appeal, shall in no case exceed the pecuniary value of such alleged slave, and shall be given either by such surety or sureties, or by such mortgage or voluntary condemnation as aforesaid :

Tenth, The security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of costs, shall in no case exceed the sum of £300 sterling, and shall be given either by such surety or sureties, or by such mortgage or voluntary condemnation as aforesaid :

Eleventh, If the security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of such costs as may be awarded, shall, in manner aforesaid, be completed within three months from the date of the petition for leave to appeal, then, and not otherwise, the court from which such appeal is brought shall make an order allowing such appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal, to His Majesty, his heirs, and successors, in his or their Privy Council, in such manner and under such rules as are observed in appeals made to His Majesty in Council from the plantations or colonies :

Twelfth, Provided nevertheless, that any person or persons feeling aggrieved by any order which may be made by, or by any proceeding of any of the said courts respecting the security to be taken upon any

(1) See post, the Slavery Abolition Act, ss. 9 and 10.

such appeal as aforesaid, shall be and is hereby authorized, by petition to His Majesty in Council, to apply for redress in the premises.

Provided always, and it is hereby further ordered, that nothing herein contained doth or shall extend or be construed to extend to take away or abridge the undoubted right or authority of His Majesty, his heirs, and successors, to admit and receive any appeal from any judgment, decree, sentence, or order of any of the said Supreme Courts, on the humble petition of any person or persons aggrieved thereby, in any case in which, and subject to any conditions or restrictions upon and under which it may seem meet to His Majesty, his heirs, and successors so to admit and receive any such appeal.

26. And it is further ordered, that in all cases of appeal allowed by any of the said Supreme Courts or by His Majesty, his heirs, and successors, such court shall, on the application and at the costs of the party or parties appellant, certify and transmit to His Majesty, his heirs, and successors, in his or their Privy Council, a true and exact copy of all proceedings, evidence, judgments, decrees and orders had or made in such causes so appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court.

27. And it is further ordered, that the said Supreme Courts respectively shall in all cases of appeal to His Majesty, his heirs, and successors, execute and carry into immediate effect such judgments and orders as His Majesty, his heirs, and successors, shall make thereupon, in such manner as any original judgment or decree of the said Supreme Court can or may be executed.

28. And it is hereby further ordered, that all orders heretofore made by His Majesty, or by any of his royal predecessors, in his or their Privy Council, and all laws, customs, and usages now or at any time heretofore established or in force in any of the said colonies, so far as such orders, laws, or usages are in anywise repugnant to or at variance with this present order, shall be and the same are hereby revoked, abrogated, rescinded, and annulled.

29. And it is further ordered, that for the purpose and within the meaning of the present order, any person lawfully administering for the time being the government of any of the said colonies, shall be deemed and taken to be the Governor thereof.

And the Right Honourable Viscount Goderich, one of His Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

(Signed) C. C. GREVILLE.

## INFERIOR COURTS OF CIVIL JUSTICE.

Under the authority of the 19th section of the preceding order, an ordinance was passed by the Governor and Court of Policy on the 13th day of September, 1832, to repeal the ordinance passed on the 23d of May, 1832, entitled "An Ordinance to establish and constitute Inferior Courts of Civil Justice in British Guiana," and to make other provisions for such inferior courts. It recites and repeals the former ordinance, and then proceeds as follows:—

Whereas by an order of His Majesty in Council, bearing date 20th June, 1831, His Majesty has been graciously pleased to authorize the establishing of Inferior Courts of Civil Justice within this colony, having jurisdiction to a certain extent as therein described.

2. Be it therefore further enacted, that there shall be one Inferior Court of Civil Justice for the district of Demerara and Essequibo, and another Inferior Court of Civil Justice for the district of Berbice.

3. And be it further enacted, that the said Inferior Courts shall be held by and before the Chief Justice or one of the Puisne Judges, at such times as the Judges of the Supreme Court shall direct and appoint.

4. And be it further enacted, that the said Inferior Civil Court shall have jurisdiction in cases to the amount or value of twenty pounds sterling, all claims in currency not exceeding 300 guilders being comprehended in this limitation.

5. And be it further enacted, that the Registrar or Sworn Clerk and Marshal of the respective Supreme Courts of Civil Justice shall attend the sitting of the said respective Inferior Civil Courts, and shall be entitled to receive certain fees for services respectively performed by them.

6. And be it further enacted, that when the Judges of the Supreme Court shall have made, ordained, and established all necessary rules, orders, and regulations respecting the manner and form of proceeding to be observed in the said Inferior Civil Courts, and respecting the manner and form of carrying the judgments and orders of the



said Inferior Civil Courts into execution, with all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said courts respectively, and as soon as the said rules, orders, and regulations shall have been duly promulgated this court shall thereupon frame the tariff fixing the amount of fees to which the respective officers of the said court shall be entitled for services performed by them in their respective offices; and on promulgation thereof by this court, the said tariff shall have force of law, and become binding on all parties concerned.

7. And be it further enacted, that this ordinance shall come into full operation on the first day of November next coming. And that no ignorance may be pretended of the several orders contained in this ordinance, the same shall be printed and published as customary.

#### PRACTICE OF THE COURTS.

In consequence of the Orders in Council remodelling the Supreme Court, and the subsequent establishment of Inferior Courts, local regulations were made directing the mode of proceeding in the Supreme Court and in the Inferior Courts of British Guiana. Many of these regulations can be of use only to the practitioners of law in the colony itself; but there are some which, as they may affect contracts made in this country, deserve to be extracted. The first three will give some idea of the jurisdiction of the courts now established in the colony.

*Manner of Proceeding to be observed in the Supreme Courts of Civil Justice in British Guiana, made and established by the Justices of the said Courts, in pursuance of His Majesty's Order in Council, bearing date 20th June, 1831.*

Sect. 1. A Court of Civil Justice shall be held in George-Town four times in each year, for the district of Demerara and Essequibo, and twice or three times, if necessary, in each year, in New Amsterdam, for the district of Berbice.

2. A Roll Court shall be held in each district before a puisne judge, on such days as shall from time to time be appointed by the Judges of the Supreme Courts, and shall be continued from day to day until the business

brought before it shall be disposed of. Provided however, that no Roll Court shall be appointed to be held in the months of August, September, and October.

3. Before the first Roll Court of every month, in which there shall be one or more Roll Court, shall be returnable all and every citation in civil causes over which the Supreme Court has jurisdiction, except in cases of re-audition from the Roll to the Supreme Court.

27. It shall and may be lawful for the judge of the Roll, and he is hereby required to make, if need be, a special report to the court, touching the examination, and the conduct or absence of any witness or witnesses, or other persons therein, or relating thereto; a copy of which report, in the event of any appeal to His Majesty in Council being granted, and the papers taken out shall be delivered with the same; and it shall and may be lawful for the court, after the case shall have been closed on both sides and pleaded, to call up and examine any witness who shall have been examined in the cause.

43. No plantation under execution shall be sold until one year after levy, and the particular description thereof and notice of the sale shall, at least six months previously to the day of sale, have been three times advertised in the London Gazette and Amsterdam Courant.

44. At the expiration of the year after due notice, as in s. 43, the court or chief justice, during non-session, upon petition of the marshal, shall fix a precise day of sale of such plantation, and after advertisement of such precise day for four successive Saturdays in the government newspaper of the colony, such plantation shall be sold at a credit of three, six, nine, and twelve months from the day of sale, payable in manner hereinafter stated; and in the event of the property to be sold consisting of several lots of land, with or without slaves or appurtenances, or of several lots of slaves, with or without buildings, and upon which lots respectively there shall be separate or distinct mortgages, liens, or claims, the holders of such distinct mortgages, liens, or claims, shall be at liberty to petition the court or chief justice during non-session for an order to sell, as it shall seem most advantageous to all parties under the circumstances of each particular case, and to enable the court to ascertain the rights of the respective parties on the decision of preference and concurrence.

55. If the purchaser of a plantation or other immove-

able property sold at execution sale, be a holder of a first or second mortgage on the same, he shall not be bound to furnish security, or pay, save and except to the extent of such claims as shall appear to the court to be preferent to such first or second mortgage, and of the amount for which the purchase-money shall exceed the amount of the sum due on such first or second mortgage, provided such first or second mortgage, in virtue of which exemption from security or any part thereof shall be claimed, shall be deposited with the registrar.

72. Every barrister, advocate, attorney, and solicitor, upon his admission to practise, shall have administered to him and shall take the following oath:—

“ You shall swear that well and truly you shall serve  
 “ the King’s subjects, according to the best of your learn-  
 “ ing and knowledge in the law, and you shall truly  
 “ counsel and advise them that shall retain you according  
 “ to the best of your skill, and you shall not defer, pro-  
 “ tract, nor delay their cause willingly, for lucre or hope  
 “ of reward. So help you God.”

And no practitioner at the bar shall be allowed to appear for a plaintiff, without filing at the time of his appearance, a power, *ad lites*, unless by leave of the court, nor for any defendant without filing, at the time of his appearance, a copy of the citation served upon the defendant, or some other authentic voucher, as evidence of his being employed for and on the behalf of such defendant.

73. Whenever the secretary shall be called upon to pass or execute a power *ad lites*, in favour of any practitioner, care shall be taken to insert therein authority to receive monies and to grant receipts, and unless such authority be inserted in the powers *ad lites*, the same shall be considered to have been intentionally withheld.

76. Edictal citations at the instance of an executor, administrator, curator, guardian, or trustee, shall be confined to two, that is to say, the first edictal citation shall be issued in the colony within one month after date of the order obtained from the chief justice, and the second, or last, so soon as the marshal shall have made his return of the edictal citation having been published three times in Europe, as in section 43, or in one month after the first shall have been called at the roll, if the publication in Europe be not required.

*Manner of proceeding in the Inferior Courts of British Guiana, as established by the Judges of the Supreme Courts in pursuance of His Majesty's Order in Council of 20th June, 1831.*

Section 19. There shall be no appeal from any sentence of these courts, and eight clear days after sentence shall have been pronounced, the party in whose favor the sentence is shall be at liberty to proceed in execution thereon.

28. Every one shall be at liberty to appear personally in the Inferior Courts, to conduct his own cause, or to employ by power *ad lites* a duly admitted barrister, advocate, or attorney, and no other person to appear for him; it being however understood that whenever such barrister, advocate, or attorney, is employed, he shall be remunerated by his own client, and no fee or remuneration paid to any barrister, advocate, or attorney, for appearing in the Inferior Courts, shall form any part or parcel of the bill of costs to be taxed against the party condemned.

*Qualification of Assessors.*

The order in Council of the 20th June, 1831, having directed that in certain cases therein mentioned, assessors should sit with the Judges of the Supreme Court, another order in Council of the date of the 15th August, 1832, was issued declaring the qualifications of such assessors. The second order was published in the colony by the proclamation of the Governor, dated on the 25th October in the same year, and was in the following terms:—

Whereas on the 20th day of June, 1831, an order was made by His Majesty with the advice of His Privy Council, for improving the administration of justice in His Majesty's Colonies of British Guiana, Trinidad, and St. Lucia, whereby it was, amongst other things, ordered, that the assessors of the courts therein mentioned in Demerara and Berbice should be chosen and appointed in such and the same manner as the members of the Court of Civil and Criminal Justice of Demerara have heretofore been chosen and appointed, and that the assessors of the said court for the trial of criminal prosecutions in Trinidad should be chosen and appointed from and out of the members of the

Cabildo of the town of Port of Spain, in the said island; and that the assessors of the said Royal Court of St. Lucia should be chosen and appointed in such and the same manner as the members of that court, other than the First President have heretofore been chosen and appointed. And whereas it is expedient to admit to the discharge of the duties of assessors in the said courts respectively, all free adult male inhabitants of the said colonies possessing such qualification as hereinafter is mentioned: it is therefore hereby ordered by His Majesty, by and with the advice of his Privy Council, that so much of the said order as is herein before recited shall be, and the same is hereby revoked and repealed. And it is hereby further ordered, that every free man except as hereinafter exempted, between the ages of 21 years and 60 years, residing in any of the said colonies, who shall have or be beneficially entitled to, for his own use and benefit, either in his own name or in trust for him, within the same colony, ten pounds by the year above reprises, in any immoveable property, or in rents, or other annual profits or proceeds issuing out of such immoveable property either in perpetuity or for the life of himself or some other person; or who shall have within the same colony for his own use and benefit, either in his own name or in trust for him as aforesaid, 20*l.* by the year above reprises in immoveable property held by lease or leases for the absolute term of 21 years, or some longer term, or for any term of years determinable on any life or lives; or who being a householder should be rated or assessed to any direct tax or impost, or to any rate for the relief of the poor, or other local object, on a value of not less than 20*l.* per annum; or who shall occupy a house of the annual value of 20*l.* shall be qualified and liable to serve as an assessor, within the meaning and for the purposes of the said recited order, in the colony in which every man so qualified respectively shall reside, and for the purpose, and within the meaning of that order, all slaves whether prædial or personal shall be considered as immoveable property. Provided always, and it is further ordered, that all members of the legislative bodies of the said respective colonies, all jurors of the Supreme Courts of Justice therein, all clergymen in holy orders of the established Church of England and Ireland, all ministers of the Kirk of Scotland, and of the Lutheran and reformed churches,

all priests of the Roman Catholic faith, all persons who shall teach or preach in any congregation of Protestant dissenters, and who shall follow no secular occupation except that of schoolmaster, all doctors of law, advocates, counsel, and barristers actually practising, all attorneys at law, solicitors, and proctors actually practising, all officers of the said courts actually exercising the duties of their respective offices; all jailors and persons actually employed by and under them in the custody of prisoners; all physicians, surgeons, and apothecaries actually practising by virtue of any diploma, license, or certificate granted by any competent authority; all officers in His Majesty's navy or army on full pay, all pilots duly licensed by any competent authority; all officers of customs, and all officers actually employed as deputies or assistants to the marshals, or other executive officers of the said courts, shall be and are hereby absolutely freed and exempted from serving as such assessors as aforesaid. Provided also, and it is further ordered, that no man who hath been, or shall be convicted of any crime that is infamous, unless he shall have obtained a free pardon, shall serve as such assessor. And whereas it is necessary that provision should be made for ascertaining the names, places of abode, and descriptions, of all persons within the said respective colonies qualified and liable to serve as such assessors, and for making and revising from time to time, proper lists of such persons, and for the due summoning of them in some settled rotation to serve as such assessors, and for the impartial selection of a sufficient number of persons from those so summoned to serve on every criminal prosecution,

It is further ordered, that the chief justices and other judges of the Supreme Court of the said colonies respectively, shall be, and they are hereby authorized, to make, ordain and establish, all necessary rules, orders, and regulations, respecting the manner in which the names, places of abode, and descriptions of persons within the said respective colonies, qualified and liable to serve as such assessors as aforesaid, shall be ascertained, and respecting the making and preserving in the different districts and quarters of the said respective colonies, lists of all such persons, and respecting the public and other notices to be given preparatively to the compiling of any such lists, and the publication of any such lists when so

compiled ; and respecting the manner in which all persons whom it may concern shall be called upon or permitted to oppose or object to the insertion or omission of any name in any such list ; and respecting the manner in which every such opposition or objection shall be heard, tried, and determined, and respecting the manner of reforming, correcting, or allowing any such list ; and respecting the manner and form in which all such lists, when corrected and reformed, shall be recorded ; and also respecting the manner, order, and form in which all persons, whose names shall be comprised in any such record, shall be summoned to attend at any sessions of any such court, there to serve as assessors, and respecting the times at which, and the manner in which such summons shall be served ; and also respecting the mode in which a competent number of assessors shall be chosen, either by ballot or otherwise, from among the number so summoned to serve as assessors in the said courts ; and also respecting the proper method of proceeding to preserve a due rotation amongst such assessors ; and also respecting the several officers by whom, and the times and places at which the before-mentioned duties respectively shall be done and performed ; and all such rules, orders, and regulations from time to time to alter, revoke, and renew, as occasion may require. Provided always, that no such rules, orders, and regulations, as aforesaid be repugnant to this present order, and that the same be forthwith transmitted under the seals of such respective courts to the respective governors, to confirm or disallow the whole or any part of such rules, orders, and regulations, as to such respective governors may in their discretion seem fit ; and the same when so confirmed by such respective governors shall take effect and be in full force within the said respective colonies until His Majesty's pleasure shall be known ; and the same shall be transmitted to His Majesty for his approbation or disallowance, in the manner directed and required by the said recited order of the 20th June 1831, with respect to the rules, orders, and regulations of the said Supreme Court therein mentioned.

And it is further ordered, that if any public officer or other person within the said colonies respectively, who, by any such rules, orders, and regulations as aforesaid shall be required or directed to perform any duty, or to

do any act in or about or connected with the several matters aforesaid or any of them, shall refuse or neglect to perform any such duty, or to do any such act, every such officer or other person shall, for every such offence, forfeit a sum not exceeding £10 nor less than 40s., as to the judges of the Supreme Court of such colony wherein the same shall occur shall seem reasonable.

And it is further ordered, that every person who, under the provision of this present order, or of any such rules, orders, and regulations as aforesaid, shall be duly summoned to serve as an assessor for the trial of any criminal prosecution in any of the said colonies, who shall not appear and serve as such assessor after being openly called three times, and on proof being made on oath of his having been duly summoned, shall forfeit and pay for every such his default, such fine, not exceeding £10 nor less than £1, as the court shall deem reasonable to impose, unless some just and sufficient cause for such defaulter's absence shall be made to appear, by oath or affidavit, to the satisfaction of the court. And it is further ordered, that every fine which shall be imposed by virtue of this present order shall be imposed by a summary proceeding before the said courts respectively, on the motion of the public prosecutor of and for any such colony, and shall, when so imposed, be levied and recovered in such and the same manner and by all such ways and means as any other fine or penalty imposed by a judgment of any such court; and shall, when so recovered, be paid over to the treasurer or other receiver of His Majesty's revenue within such colony, in aid of the expenses of the civil government thereof and the administration of justice therein.

And it is further ordered, that in all criminal prosecutions before the said courts respectively, it shall be a good cause of challenge of any person summoned to serve as an assessor, that he is not qualified according to the provisions of this present order, or that he is an illiterate person and unable to read or write, and that any other cause which according to the law of England would be a good cause of challenge of any man summoned and returned to serve as a common juror on the trial of any issue joined between the King and the prisoner on any indictment for felony or misdemeanor, shall also be good cause of challenge to any assessor summoned to serve on the trial of



any criminal prosecution in any of the said colonies, in so far as that part of the law of England is capable of being applied in the said colonies; and if any such cause of challenge shall be alleged, either by the public prosecutor or by any such person or persons against whom any such prosecution may be brought, the judges of the court shall forthwith proceed to enquire of, and consider the grounds of any such challenge, and shall either allow or overrule the same, as may be just; and upon such challenge being so allowed, another person shall be chosen to serve as assessor in the place and stead of the person so challenged, and so on, until a sufficient number of assessors shall appear against whom no cause, or no just cause, of challenge shall be alleged.

And it is further ordered, that after deducting six from the whole number of the persons summoned and actually appearing to act as assessors on any criminal prosecution, the public prosecutor and the person or persons against whom the prosecution may be brought, shall each have as many peremptory challenges as shall be equal to one half of the remaining number, or should the remaining number not be an even number, then the person or persons against whom the prosecution may be brought shall have one peremptory challenge more than the public prosecutor.

And it is further ordered, that before proceeding to the trial of any such criminal prosecution, each assessor shall, in open court, audibly pronounce and take the oath appointed by the law of England to be taken by petit jurors impannelled for the trial of any issue joined between the King and any person or persons arraigned upon any indictment in His Majesty's Court of King's Bench at Westminster.

And it is further ordered, that the assessors so to be summoned and chosen as aforesaid, shall have, exercise, and enjoy all such and the same rights, powers, and privileges, and shall perform all such and the same duties as according to the provisions of the said recited Order in Council might be exercised, enjoyed, and performed by the assessors therein mentioned.

And it is further ordered, that this present order shall take effect and come into operation in the said respective colonies so soon as the same shall have been promulgated within any such colony by the Governor thereof, and not

before ; and that for the purposes and within the meaning of this present order, the officer administering the government of any such colony shall be esteemed and taken to be the Governor thereof.

And the Right Honourable Lord Viscount Goderich, one of His Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

*C. Greville.*

ASSESSORS.

*An Ordinance to provide a sufficient number of Assessors to be associated with the Judges of the Supreme Courts of Criminal Justice of British Guiana, as enacted by the Governor and Court of Policy on the 5th December, 1831.*

Whereas, by an order made and passed by His Majesty in Council, bearing date the 20th June, 1831, it was amongst other matters provided that three assessors should be associated with three judges upon the trial of any person or persons in either of the Supreme Courts of the colony for any crime or offence, such assessors being entitled to deliberate and vote with such judges upon the final judgment to be pronounced in every such criminal case.

And whereas it was further provided that assessors shall be liable to be challenged on such and like grounds as may be alleged as lawful grounds of challenge against any petit juror impanelled for the trial of any indictment in England :

And whereas the number of persons to be elected, chosen, and appointed to serve as assessors must be sufficient to provide for cases of challenges held to be valid :

Cl. 1. Be it therefore enacted, that there shall be for the Supreme Criminal Court of Demerara and Essequibo a number of twelve assessors, and for the Supreme Criminal Court of Berbice a like number of twelve assessors.

2. And be it further enacted, that the right to elect assessors is and shall be vested in the College of Electors of British Guiana, and in the exercise of this right the college shall be bound to make a double nomination of

persons for the office of assessor, to be transmitted through the hands of His Excellency the Governor to the judges of the Supreme Court, and that it shall be lawful for the said judges to select one of the persons nominated to serve as an assessor, and the like form shall be observed on each and every occasion of a vacancy occurring in the complement of the said assessors for the said courts respectively.

3. And be it further enacted, that notification shall be sent by the secretary of the Court of Justice to each person who shall be selected in manner aforesaid, and in case of any person who shall have been selected for an assessor refusing to accept the office, or neglecting to signify his acceptance by written communication delivered to the secretary aforesaid, within fourteen days from the date of notification, such person shall be liable to a fine of 1500 guilders in behalf of the colony, and the judges of the Supreme Court shall certify to the Governor and Court of Policy that such a fine has been incurred, whereupon, unless good and valid reason for such non-acceptance or neglect be shewn to the satisfaction of the Governor and Court of Policy, the said court shall order and direct the Colonial Receiver to proceed for the fine according to law.

4. And be it further enacted, that each and every person who shall be selected in manner aforesaid to serve as an assessor, shall, within the period of one week from the expiration of the term of fourteen days allowed to signify his acceptance of office, and whose acceptance shall have been notified to the secretary, or within such period of fourteen days if he shall have accepted the office and desires to be sworn, appear before His Excellency the Governor, the Chief Justice or one of the Puisne Judges of the Supreme Court, and take and subscribe the following oath :—

“ You shall faithfully and truly discharge the duties of  
 “ an assessor in the Supreme Court of Criminal Justice  
 “ for Demerara and Essequibo (or for Berbice, as the  
 “ case may be,) and shall deliberate and vote on the final  
 “ judgment to be passed on all criminal trials on which  
 “ you may sit, without partiality, favour, or affection. So  
 “ help you God.”

After which his appointment shall be publicly notified

in the Royal Gazette of the colony ; His Excellency the Governor or one of the judges being, nevertheless, empowered to extend the time for taking such oath, if sufficient reasons be alleged to either of them to grant such extension of time.

5. And be it further enacted, that the Puisne Judges of the Supreme Court shall have the same power to administer oaths in all cases, civil and criminal, as the Presiding Judge of the Court of Justice, styled under the said Order in Council the Chief Justice, now has, and heretofore had.

6. And be it further enacted, that it shall be the duty of each and every assessor to attend the sittings at each session of the Supreme Criminal Court ; those assessors who are appointed for the Supreme Court of Demerara and Essequibo to attend the sittings to be held in Georgetown, and those assessors who are appointed for the Supreme Court at Berbice to attend the sittings in New Amsterdam, respectively ; and the proclamations of His Excellency the Governor for the time being in the Royal Gazette of British Guiana, appointing the time of holding such sessions respectively, shall be due and sufficient notice to all such assessors.

7. And be it further enacted, that previous to the bringing up of any person for trial, the names of all the assessors who may be in office for the time being, in the aforesaid jurisdictions respectively, written on similar pieces of paper, shall be placed in a box by the secretary of the Supreme Courts respectively, to be drawn therefrom in succession by the second puisne judge, and after three assessors are found to whom there is no legal ground of challenge or objection, the trial shall proceed.

And that no ignorance may be pretended of the several orders contained in this ordinance, these presents shall be published, affixed, and sent round for general information.

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There were two other clauses in this ordinance, but they have been repealed by the following ordinance :—

*An Ordinance passed by the Governor and Court of Policy on the 23d day of August, 1852, to amend an Ordinance entitled "An Ordinance to provide a sufficient number of Assessors to be associated with the Judges of the Supreme Court of Criminal Justice of British Guiana."*

Whereas we have deemed it expedient to amend an ordinance enacted on the 21st December, 1831, and published on the 22d following, intituled "An Ordinance to provide a sufficient number of Assessors to be associated with the Judges of the Supreme Court of Criminal Justice of British Guiana:"

Be it therefore enacted that the 8th and 9th clauses of the said ordinance are hereby amended to the effect—that instead of the said clauses, the following shall be and are hereby substituted in lieu thereof respectively:—

Cl. 8. And be it further enacted, that if any person, who having been appointed an assessor and whose name having been drawn as already prescribed in clause 7, shall not be present to answer thereto, or shall decline to sit as an assessor on any such trial, he shall be liable to a fine of 100 guilders, unless good and sufficient cause be shown to the satisfaction of the judges that such assessor is absent from unavoidable cause, or has good reason for declining to sit on such trial; and the judges shall, when they see fit, certify to His Excellency the Governor, that such fine or fines has or have been incurred; and His Excellency may thereupon, if he see fit, either grant authority to the colonial receiver to proceed by summary execution for the recovery of the said fine or fines, or submit the consideration of this proceeding to the Honourable Court of Policy.

9. And be it further enacted, that each assessor shall be liable to serve two years, and until the session is closed in which such two years may expire, should the same take place during any such session; and after having served for such period of two years, shall not be compellable to accept the office of assessor, until after the expiration of two years from the end of such service, provided nevertheless, that any person who has been elected and accepted the office of assessor may, at any time during such

period of two years, be relieved from further service on payment of a fine of 1500*l.* or may apply by petition to the Governor and Court of Policy to be relieved from such further service without the payment of such fine, and it shall be competent to the Governor and Court of Policy, on good and valid reasons being adduced, to relieve such person from such further service. But any person elected an assessor, and who may have paid the fine, shall be liable to be re-elected and to serve at the expiration of two years from the period of his former election.

And that no ignorance may be pretended of the several orders contained in this ordinance, these presents shall be published, affixed, and sent round for general information.

#### LAWS.

Since the date of the commission to General D'Urban the following ordinances have been passed, declaring what shall be the laws of the united colony.

An ordinance dated on the 2d December, 1831, and published on the day following, "to continue in force the statutes, acts, and ordinances heretofore passed, enacted, and ordained by the Governor or Lieutenant-Governor and Court of Policy of the colonies of Essequibo and Demerara, or by the Governor or Lieutenant-Governor and Court of Policy of the united colony of Demerara and Essequibo, and by the Governor or Lieutenant-Governor and Court of Policy of Berbice, or by the Governor or Lieutenant-Governor and council of government of Berbice, respectively, as enacted by the Governor and Court of Policy of British Guiana." This ordinance, after reciting that "Whereas His Majesty had been graciously pleased by his royal commission and letters-patent, dated 4th day of March, 1831, (see ante, 262,) to give and grant to the Governor of the colony of British Guiana full power and authority, with the advice and consent of the Court of Policy of the said colony, to make, enact, ordain, and establish laws for the order, peace, and good government of the said colony," declares that the laws theretofore passed in any of the colonies now forming British Guiana, "shall have the full force and operation of law in the said respective districts of the colony of British Guiana." The Governor and the Court of Policy reserved to themselves the power of altering, revoking, &c. the said acts, &c. as they may judge proper.

On the 30th November, 1831, was passed another ordinance "to continue in force the laws of evidence and the rules for criminal practice in Demerara and Essequibo, and to extend the same to the district of Berbice, as enacted by the Governor and Court of Policy."

The courts of the colony are the Supreme Court, established by the Order in Council, and the Inferior Courts created under the authority thereof.

## ST. LUCIA.

THIS island, one of the Caribbean chain, is situated between the latitudes of thirteen and fourteen degrees north, and the longitudes of fifty-nine and a half and sixty and a half west. It has Martinico on the north at the distance of about twenty miles, and St. Vincent's on the south at a small distance.—4 B. Edw. 261.

The soil of St. Lucia is fertile. The finest part of the colony is the south-west quarter, which is well cultivated and thickly inhabited. The interior is nearly desert. The productions of the island are sugar, coffee, cocoa, cotton, and indigo. The coffee is said to be superior to that of Martinico. Within the last thirty years the quantity of produce has perhaps been more than doubled. In 1788 the population was 20,918 persons, of whom 2159 were whites. The population in 1814 was only 17,485, of whom only 1210 were whites. Since the restoration of peace and the cession of the colony to Great Britain, it is, however, believed to be once more increasing.

St. Lucia is divided into eleven parishes or districts, which bear the name of Castries, Ance la Raye, Souffriere, Choiseul, Laborie, Vieux Fort, Micoud, Prasling, D'Ennery, Dauphin, and Gros Islet.—4 B. Edw. 274.

The island of St. Lucia was for the purposes of the administration of justice united to the colonies of British Guiana and Berbice, by an order in council of the 23d April, 1831, but that order was suspended by another of the date of the 20th June in the same year. For the mode in which the courts are now constituted see the last of these orders, ante, 274.

## HISTORY AND CONSTITUTION.

The name of St. Lucia is derived from the saint's day on which it was discovered. It was not till 1639 that any attempt was made to form a settlement on this island. It

was then taken possession of by the English. Two years afterwards, however, the Governor and most of the settlers were murdered by the Charaibes, and the survivors were driven out.—4 B. Edw. 263.

In 1650 it was seized upon by the French, but recovered by the English in 1664, who however again evacuated it. From 1718 to 1730 disputes existed between the English and French settlers assuming to take possession under the authority of grants from their respective monarchs, when in the latter year it was declared a neutral territory. It was formally ceded to the French in 1763 at the time that Grenada, Tobago, St. Vincent's, and Dominica were given up to the British Crown. It is at present a crown colony governed by Orders in Council, and the inhabitants have reason to regret the cession to the French in 1763, which prevented their enjoying the advantages of a representative assembly in the same manner as the colonies just mentioned. The island was captured by the English in 1794, held by them till the peace of Amiens, then restored to the French, and again taken on the 19th June, 1803, and finally ceded to England at the peace of 1815. (1)

#### LAWS. (2)

The laws in force here at the time preceding the last cession to France still prevail, except so far as they have been altered by Orders in Council, to which St. Lucia as a colony acquired by conquest is still subject. With this exception, therefore, it is governed by the ancient law of France, as it existed before the promulgation of the code of Napoleon.

The old laws proceed from two very different sources or authorities; some were enacted by the Kings of France, or government at home, and others by the Governor and Intendant jointly—the local authorities.—House of Commons' Papers relative to the Slave Population, (1826,) p. 16.

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(1) 4th vol. Raynal's East and West Indies; 4 Edwards and Howard's Laws of Colonies.

general topic, how far the colonies are subject to the law of the mother country.

(2) See ante, p. 3 to 16, on the



The two principal laws emanating from the government at home are the Code Noir of 1685, approved and signed by Colbert, and the edict of 1786. The last, though seldom quoted, will be found to include some very wholesome provisions, and many similar to those contained in the Trinidad Order.—Ib. 17.

#### LAW OFFICERS.

The law officers of the Crown are in France bound to protect the interests, and are the professional advisers of all persons who from their youth or mental incapacity, or from being under the power and authority of another (such as married women) cannot be called free agents.

The Procureur General and Procureur du Roi are not allowed to take private practice; their substitutes are, as they merely replace them occasionally. Pigeau's definition of the *Ministere Public*, (*Traite de la Procedure Civile*, tom. i. p. 235,) is particularly clear and in point. "By the *Ministere Public* is to be understood the *Procureurs du Roi* and their deputies in the tribunals. The law has established them to watch over its execution, and to act as guardians to all that which relates to public order, the condition of men, the rights of those who are not able to defend themselves, and finally the regularity of all jurisdictions. It is therefore necessary that all subjects of this nature should be communicated to them."—Ib. 18.

Mr. Jeremie, from whose papers these statements are taken, goes on to add that in consequence of the terms of the law, he considered the Procureur du Roi to be *ex officio* the protector of slaves in the colonies where the French law existed.

#### PARTICULAR LAWS.

##### *Marriage Property.*

By the custom of Paris, and now by the general law of France, persons marrying place part of their property in common, (*en communanté*); of this the husband has the administration during coverture; another part they retain for their private or separate use; this is the *propre*

which should not be confounded with the *propre au succession*; in the latter case, *propre* signifies a *real* estate derived by descent, as distinguished from a real estate acquired by purchase.—House of Commons' Papers on the Slave Population, (1826,) p. 3.

### *Ranking of Creditors.*

In attachments of personal property the first creditor attaching is preferred. Creditors acquire a preference by the *arrest* or *saisie* in execution, and not by the date of the debt, or even of the judgment. This is the case in the city of London with respect to property in the hands of a garnishee.—*Ib.* p. 4.

### *Mortgages.*

No proprietor, whose plantation is under mortgage, nor his attorney nor agent, shall sell or otherwise transfer any of his plantation slaves, and thus separate them from his plantation, on pain of being punished as a *Stellionaire* or person guilty of fraudulently transferring real property, and such sales, transfers, &c. shall be null and void.

*Stellionat.* This is a crime I have not found mentioned in Hale, Hawkins, or any other authors on the English Crown Laws. The punishment awarded by the law of France is either a fine or imprisonment, but the chief benefit derived by the creditor is that a debtor guilty of "*stellionat*" is liable to personal arrest, that no exemption will avail him, nor would he be admitted to make cession. *Stellionatûs crimem etiam infamum irrogat*, d. 13. So that he becomes incapable of holding any public office.—*Ib.* 4.

A mortgage creditor wishing to recover the amount of his debts (to foreclose) obtains an order to take possession of the estate; this taking possession is called "*saisie réelle*." He is then bound to let it for a given term of years; the tenant is "*le fermier judiciaire*;" during this time the creditor goes through various forms required before he can obtain possession to sell it. The sale is called "*l'adjudication par décret*;" and from the day the creditor took possession to the day of sale the estate is said to be "*en saisie réelle*."

"*Hypothèques et privilèges*."—Privilege is a right of

preference proceeding from the nature of the debts, as debts for funeral expenses are said to be privileged.

*Hypothèque* is a kind of preference acquired by contract or judgment, and is totally independent of the nature of the debt.

Hypothèques rank according to their dates ; privileges, in the order assigned them by law, without reference to the period at which the debt was contracted.—Ib. 5.

Landed property is here of little value, scarcely a twelfth-part of the best cultivated estates is turned to use. Plantations, even with extensive buildings upon them, produce, when sold, little, often nothing more than the estimated price of the slaves, and yet slaves are not liable to mortgage. It follows that mortgage deeds are, in effect, of no value or benefit to the holder ; so that the West India merchant who had, when St. Lucia became a British colony, poured large capitals into it upon the faith of contracts which he thought binding, now begins to discover, what the planter who had so readily borrowed was always well aware of, that he is not only deprived of the privilege or preference to which his mortgage seemed to entitle him, but that he has no kind of security whatever. The slave cannot be withdrawn by the creditor from the land, and sold in satisfaction of a judgment. The person of the debtor is protected by law, and the remedy by *saisie réelle* it would be useless to adopt, since it is perfectly evident that as long as the owner can sell and remove his slaves, he will,—probably before the commencement, but certainly long before the conclusion of the suit,—thus leaving for his creditor the land and buildings, not worth altogether the expense incurred to obtain them.—Ib. 22.

#### COLLECTION OF LAWS.

The laws are to be found in the collection entitled “The Code of Martinique,” lately printed in five volumes. All the papers, registers, and archives of the registry of St. Lucia having been burnt at the fire which destroyed the town of Castries in 1790, there are at present existing in the registers of this depôt only some laws, ordinances, and rules, which have been made and published by the different English Governors since the re-establishment of

the tribunals by General Prevost in 1800, with the exception of some acts of the French government while it occupied the island after its restoration to the French by virtue of the treaty of Amiens, up to the conquest made by the British arms in 1803. But these acts have not been much followed since the new conquest, as the colony was then ceded subject to the laws which ruled it before its last restoration to the French government.—Howard's *Laws of the Colonies*, 579, 580.

The Supreme Court in this island is now constituted according to the provisions contained in the Order in Council of 20th June, 1831. (See ante, 274.)

## TRINIDAD.

AT the entrance of the Gulph of Paria, which it landlocks, and stretching from the mouth of the Orinoco to the mountains of Cumana, between the tenth and eleventh degrees of north latitude, and the sixty-first and sixty-third degrees of west longitude, is situated the island of Trinidad. Its extreme breadth from east to west is between sixty and seventy miles, and fifty miles from north to south. From its peculiar shape, however, its general breadth is much greater from north to south than from east to west. In form it is compared by the Spaniards to an ox hide; but by a recent map constructed from correct observations made by M. de Humboldt and M. Churucca, it appears rather to resemble a square with a semicircular piece cut out of its western side, so as to make on that side an irregular crescent, one horn of which is turned towards the Orinoco and the other to the peninsular extremity of the province of Cumana. Circumscribed by the main land and the island, is the Gulph of Paria, which affords to vessels of every dimension a secure shelter and an excellent anchorage. The channel between the Orinoco and Trinidad is called the Serpent's Mouth; that between Trinidad and Cape Paria is interspersed with islands, and bears the name of the Dragon's Mouth, which was given to it by Columbus. The name of Trinidad was also given to the island by that illustrious navigator, from the circumstance of three of the highest peaks of the mountains having first appeared to him on his approach to the land.—4 B. Edw. 288, 289.

Trinidad is abundantly provided with excellent harbours, among the principal of which are Chagaramus, Puerto d'España, and Naparima, all on the Gulph of Paria, and the soil is deep and fertile.

The principal exportable produce of Trinidad consists of sugar, rum, coffee, indigo, cotton, and cocoa. The cocoa

of this island was always celebrated for its excellent quality, being considered as superior even to that of Caraccas.—4 B. Edw. 295, 296.

#### HISTORY AND CONSTITUTION.

The island of Trinidad was discovered by Columbus on the 31st of July, 1498. The discovery was made in his third voyage, and the island was named by him after the Holy Trinity. It appears from the account of Herrera that he was drawn by the force of the currents caused by the descending waters of the Orinoco into the Gulf of Paria, which it is said he called Golfo Triste, from his having at first despaired of finding an outlet, and consequently believed that his labour was entirely lost. Having been in great danger in a violent storm he made a vow to give the name of the Holy Trinity to the first land he should find, soon after which a sailor in the main-top saw three points of land, whereby the name fitted every way to his vow. Columbus at length found egress through the channels on the north, to which, on account of the stormy navigation, he gave the name of the Dragon's Mouth. The Spaniards did not attempt to make any settlement on the island till ninety years subsequent to its discovery.

It was almost immediately afterwards captured by Sir W. Raleigh in 1595, on his way to Guiana in search of El Dorado, but it speedily fell again into the power of the Spaniards. Previously to the year 1783, so small had been the efforts made to render this colony as valuable as its natural resources would have made it, that a single vessel belonging to a Dutch house in St. Eustatia, and making annually two or three voyages, was sufficient to carry on the whole commerce of the island. M. Roume St. Laurent, a gentleman of Grenada, and Don Joseph Chacon, the Governor appointed from Spain, were the first persons to whom the colony was indebted for its prosperity. In 1797 Trinidad was captured by the troops under Sir Ralph Abercromby. It was ceded by the Spaniards at the peace of Amiens, and has since continued in the possession of the British.—1 B. Edw. 71, and 4 Ib. 297, 301.

## LAWS. (1)

The laws in force here are the laws of Spain as established at the time of the conquest by the English, with such alterations only as have been made in them by Orders in Council, to which this island as a colony by conquest is now subject. (2) It would appear that either there had been a general intention to alter the Spanish laws of this colony, or that doubts had been expressed as to their authority, for in a proclamation dated on the 19th June, 1813, and directing how appeals are to be allowed, and what security is to be given by appellants, are formal declarations as to the law of the colony and the jurisdiction of the courts there. The proclamation, which, until the recent Orders in Council, was considered as the legal constitution of the colony, is in the following terms:—

## TRINIDAD.

By His Royal Highness the Prince of Wales, Regent of the United Kingdom of Great Britain and Ireland, in the name and on the behalf of His Majesty.

*A Proclamation.*

WHEREAS, by our commission or letters-patent under the great seal of England, bearing date at our court at St. James's the 31st day of October last past, we did, in the name and on the behalf of His Majesty, constitute and appoint our trusty and well-beloved Sir Ralph James Woodford, Bart., to be our Governor and Commander-in-Chief in and over His Majesty's said Island of Trinidad, as well as of all our forts and garrisons within the same as in and by the said in part recited commission or letters-patent and our instructions therein mentioned and referred to will more fully appear: And whereas, we, acting in the name and on the behalf of His Majesty, have thought fit to issue this our proclamation, and we do therefore hereby in the name and on the behalf of His

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(1) See ante, p. 3 to 16, on the general topic how far the colonies are subject to the law of the mother

country.

(2) Ante, 23, and Johnston's Institutes of the Spanish Law, Preface, p. 7.

Majesty publish, declare and proclaim that for the present and until our pleasure shall be further signified, the administration of justice and police in our said island should, as nearly as circumstances will permit, be exercised by our said Governor in conformity with the ancient laws that subsisted within the same previous to the surrender of the said island to us, subject to such alterations, regulations, and improvements as may have been since made and approved of by us: and subject also to such directions as our said Governor shall have received, or may hereafter receive from us, under our signet or sign manual, or by our order in our Privy Council, or through one of our principal Secretaries of State; or to such deviations in consequence of sudden and unforeseen emergencies as may render a departure therefrom manifestly expedient.

The proclamation then went on to direct the manner in which appeals should be allowed from the inferior to the supreme courts in the colony, and from them to the King in Council. This part of the proclamation is now superseded by the Order in Council of 20th June, 1831. (See ante, 280.)

Mr. Maddock and Mr. Dwarris had prepared questions relative to the administration of justice in the colony when Mr. Henry arrived there with authority to co-operate with them, and to act as senior commissioner. Mr. Dwarris was unfortunately compelled, very shortly afterwards, to return to England on account of ill health, and the examinations were taken by Mr. Henry and Mr. Maddock. These two commissioners then sailed for St. Lucia, where, before the report on Trinidad could possibly be prepared, Mr. Maddock fell a victim to the climate. The examinations were afterwards brought to England by Mr. Henry, and the report was the joint labour of himself and Mr. Dwarris.

No English statutes are believed to be in force in this island, with the exception of the Mutiny Acts and those of navigation and trade, but there are a variety of local laws made by the authority of the King in Council or by proclamations of the Governor for the time being, by virtue of the powers incident to his office, which latter we shall mention more fully hereafter.

The Spanish laws which are of authority in this colony are such as were in force at the time of the capture of the island (February, 1797,) and that have not since been re-



pealed by His Majesty the King of England. Of these laws there are some compilations and digests; viz. what is termed the *Derecho Real de Castilla*, the *Fuero Juzgo*, the *Fuero Viejo de Castilla*, the *Fuero Real de España*, the *Siete Partidas*, *Leyes de Estilo*, *Ordenamiento Real*, *Nueva Recopilacion de Castilla*, the latest edition; *Novissima Recopilacion*, or such of them as were enacted previously to 1797; and the *Recopilacion de las Leyes de las Indias*.

By a proclamation of the Governor, Sir R. Woodford, (18th December, 1813,) all Orders in Council and proclamations are ordered to be enrolled and recorded in proper books kept for that purpose, and so recorded to be evidence.

### *Spanish Laws in Force.*

(Observations on.)

By a proclamation of the 19th June, 1813, the administration of justice and police is directed to be continued in conformity to the ancient laws and institutions that existed previous to the surrender of the island, subject to such alterations as it might be advisable to make therein from time to time.

Under this authority, therefore, the ancient Spanish law, and the Roman law, as its auxiliary, in cases where the former is defective, may be considered (so far as they are not restricted by subsequent regulations) as the common and statute law of the colony, and as binding in all cases not otherwise especially provided for; and that the English laws and statutes, except those regarding navigation, revenue, and trade, and the Mutiny Acts, and those made since the cession of the colony, in which the island is specially noticed, are not binding.

With respect to the British act 5 Geo. 2, c. 7, (for the more easy recovery of debts in the plantations,) a variety of conflicting opinions seem to have prevailed, whether it was to be considered in force or not in Trinidad; but this doubt seems to be done away by the last clause of an Order in Council of the 8th June, 1816, which is as follows:—

“And whereas it is expedient to facilitate the proof of mercantile debts, and to legalize the testimony of clerks, book-keepers, and others employed by merchants; it is

hereby ordered and directed, that the declarations on oath of such persons, in all civil proceedings wherein their employers are parties, shall henceforth be taken to be good and admissible evidence in favour of such their employers, any law to the contrary notwithstanding."—Trinidad Commissioners' Rep. 32.

#### COLLECTION OF LAWS.

There is no complete printed collection of the Orders in Council and proclamations, &c. by which changes or modifications have from time to time been made in the Spanish law; though there is such a printed collection of those which have been promulgated since the administration of the government by Sir Ralph Woodford; most of the latter are to be found in Johnston's Institutes of the Laws of Spain. Of the MS. proclamations of former Governors, the judge of criminal inquiry thought no person had a complete collection; but the chief justice said they were deposited in the respective offices of the authorities by which the same had been issued, and that any person desirous of consulting them might be enabled to do so upon application to the respective authorities.

These manuscript laws may be given in evidence by producing the originals or duly certified copies.—Trinidad Commissioners' Report, p. 6.

#### COURTS IN GENERAL.

The courts established in this colony for the administration of civil justice, at the time of the commissioners visiting the colony, were the Court of Intendant, the Complaint Court, the Court of First Instance of Civil Jurisdiction, the Instance Court of Vice-Admiralty, and the Superior Court of Appeal of Civil Jurisdiction; the Governor was besides vested with the special power of exercising the authorities and jurisdiction, whether appellant or original, which were theretofore exercised in the Courts of *Audiencia* in the city of Caraccas.

The courts established for the administration of criminal justice, were, at that period, the Court of the Alcaldes in Ordinary, the Court of Criminal Inquiry, the Court for the trial of Criminal Prosecutions, and the Court of Appeal in all cases of condemnation to death. Several of these

courts and the offices connected with them have lately been abolished or remodelled. (3)

The persons usually appointed judges in the foregoing courts, with the exception of the Alcaldes in Ordinary, (who resemble the assistant-judges in the other colonies,) are barristers.

### *Barristers and Attornies.*

It is not required that persons acting as counsel in these courts should previously have been called to the bar in England. They are admitted to practise as licentiates by the Governor, exercising the powers of the Royal *Audiencia*. They take an oath for the due performance of their office.

Their license is not (says the chief justice) expressed to be during pleasure, and by the law such licenses are revocable, upon just cause, by the Royal *Audiencia*.

The judge of criminal inquiry stated that the license is expressed to be during pleasure.

The counsel in this island do not act as attornies or solicitors, nor is it required that these latter should have previously served a clerkship, or kept any number of terms in England or in the colony.

It is the practice, however, for persons applying for licenses to act as attornies and solicitors, to produce a certificate of some practising barrister of the service of such person in his office, and of his knowledge of the practice of the courts.

For this license they pay no fees.

They take an oath for the due performance of the duties of their office.

There is no rule in any of the courts of this island prohibiting a party from being heard in person, or the resident attorney of an absent party from being heard in person on behalf of his constituent.

(3) The Court of Criminal Inquiry, Tribunal of Appeal in all cases of condemnation to death, Superior Tribunal of Appeal of Civil Jurisdiction, and Tribunal of the Royal *Audiencia*, have all been abolished by the Order in Council of the 20th June, 1831. (See ante, 280.)

The offices of Father General of Minors, Defender of the Absent, and Depositario General, have also been abolished by the above order. And the offices of Taxador, Judicial Referee, Liquidator, and Partidor, have by the same order been consolidated, so as to constitute one office.

No security, the judge of criminal inquiry said, is to his knowledge given by these officers.—Trinidad Commissioners' Rep. 6, 7.

*Court of the Intendant (and herein of Escheats.)*

This court has jurisdiction for the trial of claims of the Crown, or the *Fisc*, or Exchequer, in respect of debts due by individuals to the crown, escheat, and the like, and in matters relating to crown lands.

As a court of record it has the power of fining for contempt, and enforcing (the judge of criminal inquiry apprehends) the payment by imprisonment.

The Governor sits as judge in this court, and is assisted by his assessor. They receive in these capacities no salaries.

The fees, &c. which they are entitled to under the docket of 23d July, 1816, are paid into the chest of the colony.

Property does not often escheat to the crown for want of heirs.

The chief justice was not aware of any precedent of slaves being declared escheated; but slaves when escheated would be taken possession of by the escheator-general, and worked for the benefit of the crown.

Cases of intestacy among the unmarried coloured inhabitants are not, it is said, frequent.

Illegitimate children of an intestate, whose property has escheated for want of heirs at law, are entitled to *one-sixth* of the property of their ancestor, by way of alimentary allowance.

The chief judge said he was not aware of any inconvenience having arisen from the mode of administration of justice in cases of escheat.—Trinidad Commissioners' Rep. 7, 8.

*Court of Criminal Trial.*

This court was established by an Order in Council of September 16th, 1822, which declares that it shall consist of the chief judge (as president), the assessor of the Governor, the alcaldes in ordinary, and the escribanos of the Civil Tribunal, (who are to act in the same capacity herein.)

The court sits in the town of Port of Spain, whenever there is any cause before it for trial.

The subject-matters of its jurisdiction are all criminal offences committed in the island, with the exception of petty thefts and misdemeanors, which are heard before one or other of the *alcaldes* in ordinary, under the 18th and 19th clauses of the above-mentioned Order in Council.

The Attorney-General prosecutes offenders in this court.

Offences committed by free coloured persons against slaves, as well as others, are tried in this court; but the chief justice added (speaking of offences by free persons against slaves) "none such have yet been brought before it."

Slaves, as well as free persons, are tried in this court under the Order in Council of the 16th September, 1822, and the proceedings, as regards the modes of trial and its incidents, respite, pardon, execution, &c., are in every respect the same as those against free persons. Legal assistance is afforded to them, if the owner will not incur the expense.

All offences which would be capital in a free person are also capital in a slave.

Prosecutions are opened by counsel, who are not limited to a statement of facts, but may make any observations relevant to the case for trial.

There is no jury in this court, but counsel address the court for the prisoner, and no inconvenience, it is stated, has been found to result from this practice.

The depositions of the witnesses before the judge of criminal inquiry, are, by the practice of the court, always used on the trial; but *viva voce* evidence is also required and received.

The indictment and pleas in this court differ from those used in England; they are entered in record, and such records are preserved in the office of the deputy-secretary and registrar of the *Cabildo*.

The trial is according to the Spanish law, subject to the Order in Council of 16th September, 1822.

The chief judge alone, as president, sums up the evidence to the court, and afterwards takes their opinion as to the guilt or innocence of the prisoner, commencing with the junior member. He also, as president, pronounces the sentence of the court.

The judgment of this court cannot be arrested after trial, but is final in all cases, except those of condemnation

to death, in which case an appeal lies to the Governor in Council, under the order of 16th September, 1822.

The Governor has the power to reprieve and respite, and to pardon in all cases except treason and wilful murder. He founds his opinion, it is supposed, on the original proceedings and on the report of the chief justice.

A *nolle prosequi* is never entered up by the Attorney-General; this power is not defined by the Spanish law, nor by the Order in Council constituting this court. The records of all proceedings in this court are deposited in the office of the deputy-secretary and registrar.—Trinidad Commissioners' Rep. 9, 11.

### *Court of First Instance of Civil Jurisdiction.*

This court derives its authority under the Order in Council of 16th September, 1822.

The subject-matters of its jurisdiction are all civil suits and actions in the colony. It is said also to have jurisdiction over matters *in equity*.

It is composed of the chief justice, the judge of criminal inquiry (when the duties of his office will permit), and the two alcaldes in ordinary.

The chief justice receives a salary of £2000 sterling per annum, his fees are regulated by the docket of 23d July, 1816.

The chief judge, and judge of criminal inquiry, and one of the alcaldes in ordinary are sufficient to form a court.

The chief judge and judge of criminal inquiry are lawyers by profession. The alcaldes in ordinary are chosen by the board of Cabildo, from the most respectable inhabitants of the colony.

The officers of the court are one escribano (or secretary), one clerk to the judge, and one judicial referee, liquidator, and partidor, all appointed by the Governor, and holding their offices during his pleasure.

The clerk of the judge receives a salary of £500 currency per annum, and no fees.

The pleadings and the rules of evidence in this colony are derived from the Spanish law. The latter have been, however, in some respects, altered by the several proclamations issued for that purpose.

In case of an absent defendant having no attorney in this island, the rules of this court require service of process against him to be made upon the defender of the

absent, and among absentees are included those persons who have never been in the island.

There is no power of arrest before judgment or execution, except under very special circumstances.

The attachment of debts due to a defendant in the hands of a third person is seldom resorted to here. It is not, however, attended with much expense.

The chief justice does not consider the act of 5 Geo. 2, c. 7, for facilitating the recovery of debts in the West Indies, to be in force in Trinidad. The judge of criminal inquiry expressed his doubt on this point. (But see ante, 75, 76, 309, and notes.)

In an action on a bill of exchange or promissory note, the practice is for the plaintiff to present his account for principal, interest, damages, and expenses; and if such statement be objected to by the defendant, it is either established by proof, or referred to the judicial referee for his report.

Execution operates first against personal property; in default thereof, against real property; and in default of both, against the person.

Executions are never, when taken out, suspended and used as securities.

The costs in this court are taxed by an officer appointed for that purpose.

There is no process in the Spanish law exactly resembling the action of ejectment; but a remedy is afforded for the attainment of the same end.

With respect to adverse possession as a bar to ejectment, the chief justice said ten years' possession, with title and good faith, if the real owner were present and of age, would be a bar; if absent, twenty years; but thirty years would be a good bar in any case, except as against the crown and the church. The judge of criminal inquiry said the rule of prescription was thirty years generally as to realty, &c., even though possession was acquired without good faith; forty years as to the crown, except as to criminal and civil jurisdictions, and duties and tributes. Forty years are considered time immemorial.

It appears that this court has jurisdiction to relieve in cases where a deed has been lost, or where a mistake has been made in preparing a deed.

A mortgagor can in all cases redeem the mortgage property by paying the mortgage money and interest. Mort-

gages in fee do not seem to be known to the Spanish law.

A mortgagee can recover his mortgage money not paid at the time appointed, or obtain possession of the mortgaged property by a suit in this court.

Tacking seems to be known in practice at Trinidad as well as in England.

Trusts are enforceable in this court, and executors or trustees can be called upon to give an account; such account is taken by the court itself, or by reference to the judicial referee.

It is not necessary that every agreement respecting real or personal estates should be in writing; such agreement can be specifically enforced or annulled.

Frauds are considered in this court, and relief given where fraud is established.

The property of intestates is distributable according to the rules of succession and descent by the civil law.

This court has jurisdiction in cases of bankruptcy and infancy, and in respect of the guardianship and maintenance of infants, also in cases of lunatics and idiots.

*Cession of property*, i. e. where a debtor voluntarily cedes all his property into the hands of the court for the benefit of his creditors, is in practice here. It is not limited to any particular class of persons.

So also is the compulsory remedy originating with creditors to obtain payment from insolvent debtors, which is termed a *concurso* of creditors.

The court has jurisdiction in cases of application by a wife for separate maintenance on account of the misconduct of the husband. The chief justice said he was not aware of any means of obtaining a divorce.

Legacies can be sued for in this court; and if a husband sue for a legacy left to his wife he is not bound to make any settlement on his wife or children in respect thereof.

There are no proceedings in this court similar to injunctions in England; but the law affords a remedy in all those cases in which injunctions are usually applied for, such as to stay waste, &c. by an action to restrain, or to obtain security till the question is decided.

The court has jurisdiction in all cases of manumission by deed or will.

Formerly a preference was given to all debts necessarily



incurred for the expenses essential to a plantation, but this no longer exists.

To this court belongs jurisdiction to grant administration of property of persons intestate, and as to other matters connected with the powers of the Court of Ordinary in the other British Colonies.

All wills affecting real and personal property in this island, and executed here, are proved before the Governor, and are recorded in the office of the deputy secretary and registrar.

There is no provision for appeal in case of the Governor's refusal to receive a will for proof.

Cases of contested wills are decided in this court.

All wills to take effect ought to be registered within one month after the decease, of the testator, or after the executor has notice of his decease, and of his own appointment as executor. It is necessary that all deeds should be registered, but no time is prescribed for such registry. Wills are, however, admitted to be registered at any time after the expiration of the month. Descents are guided in this colony by civil law.—Trinidad Commissioners' Rep. 12, 16, 69, 91.

#### *Appeals to the King in Council.*

Appeals to the King in Council were provided for by proclamation of 19th June, 1813, where the sum in question is above £500 sterling. The expenses are established by the docket of 23d July, 1816.—Trin. Comm. Rep. 18. Appeals are now regulated by the Order in Council of the 20th June, 1831. (See ante, 280.)

#### *Court of Admiralty.*

The Court of Vice-Admiralty in this island derives its authority from the Crown, and the subject-matters of its jurisdiction are maritime cases, or cases arising on the high seas, not provided for by statutes 28 Hen. 8, cap. 15, and 46 Geo. 3, cap. 54. It exercises also the jurisdiction of a Court of Exchequer in England over cases of forfeitures and penalties incurred by breach of the acts of parliament relating to trade and revenue in the colonies.

The Chief Justice is the sole judge. He is appointed by the Governor and confirmed by the Lords of the Admiralty, holding the office during pleasure, and removable by the authority appointing him.

The officers of the court are a registrar and marshal. The registrar is a patent officer, the marshal is appointed by the Governor. They hold their offices during pleasure, and they give no security. They are, however, under the control and superintendance of the court; they have no salaries, but receive fees.

The court follows, in its decisions, the civil law for maritime cases, and the acts of parliament for revenue cases.

Proceedings for the recovery of seamen's wages are very seldom instituted in this court.

There are no Admiralty Sessions held in Trinidad, and no authority exists there for the trial of piracy and the like.—Trin. Comm. Rep. p. 19, 94.

#### *Complaint Court.* (4)

The Court of Complaint in this island has a summary jurisdiction in respect of demands not exceeding 1000 dollars (or £500 currency), the power of which is exercised by the chief judge, under a proclamation of 31st January, 1823. He receives no salary in this especial capacity. The fees which he receives are those allowed by the docket of 25th November, 1823, which also regulates the costs on suits in this court.

This court tries cases of unliquidated damages.

Advocates and solicitors frequently plead in this court, but the parties may, in all cases, support their own causes.

The plaintiff and defendant may be examined on oath in this court, under all circumstances.

#### *Court of Alcaldes in Ordinary.* (5)

The Alcaldes in Ordinary (who, it will be observed, sit with the Chief Justice in the Court of First Instance of

(4) By the 22d section of the Order in Council of the 23d April, 1831, the Court of Criminal Inquiry, the Court of Audiencia, the Complaint Court, the Court of the Alcaldes in Ordinary, and the Court of the Alcaldes de Barrio, were all abolished; but that order has been suspended by the order of the 20th June, by the 23d section of which only four of these courts, namely, the Court of

Criminal Inquiry, the Tribunal of Appeal in all cases of condemnation to death, the Superior Tribunal of Appeal of Civil Jurisdiction, and the Tribunal of Royal Audiencia, are abolished. During the continuance of the suspension of the first order, the three last courts mentioned in it as abolished, will of course continue their functions. See ante, 274, 280.

(5) See the last note.

Civil Jurisdiction, as assistant judges,) are also empowered to hold a separate court by an Order in Council of 1st September, 1822, which, in clauses 18th and 19th, directs that "the *alcaldes* in ordinary shall, by turns, two days in each week, or oftener if necessary, sit in open court for the hearing and determining of all such petty thefts, assaults, breaches of the peace, contraventions of the police laws and regulations, and all similar misdemeanors, as by the chief of police, or by his assistants, shall be brought before them; and the *alcalde* shall have power to adjudge the prisoner, on a verbal and summary hearing of the parties in the prisoner's presence, to a fine not exceeding £30 currency, or to imprisonment for any term not exceeding two months, with or without hard work, or to work in chains in cleaning the streets, or other public work, for any time not exceeding the like term, or to corporal punishment."

The *alcaldes* in ordinary are appointed annually by the illustrious board of *Cabildo*, and confirmed by his Excellency the Governor, as president of that board.

They are chosen from among the most respectable inhabitants of the colony. They receive no salary, fees, or other emoluments.—Trin. Comm. Rep. 2<sup>e</sup>, 21.

#### *Alcaldes de Barrio.* (6)

By proclamation of 19th January, 1814, jurisdiction is given to the *Alcaldes de Barrio* in their several districts, to entertain civil causes or pleas of debt to the amount of twenty dollars, with an appeal to the chief judge if made within five days after sentence.

The *Alcaldes de Barrio* are also officers of the government for the police of the town.

They are elected by the illustrious board of *Cabildo*, from among the freeholders of the town, and continue in office for one year.

They receive no salary or emoluments.—Trin. Comm. Rep. 21, 101, 181.

#### *Escribano, or Registrar of the Supreme Court.*

This officer is appointed and removeable by the Governor. No confirmation from home is necessary.

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(6) See the note (4) in the preceding page.

He has no salary, but is paid by fees. He records the proceedings of the court, takes minutes of legal points, signs orders, and issues the notices of these orders to the several parties in the cause, (for which he charges by the tariff,) and in cases of bankruptcy or *concurso* he notifies the fact to each creditor, however trifling his claims, (which is very burdensome to the estate.)—Trin. Comm. Rep. 24, 178.

#### *Registrar of Deeds and Wills.*

This is a patent office, and its duties are discharged by a deputy. He is paid by fees and acts as clerk of the council, which duty is attached to his office of registrar.—Trin. Comm. Rep. 25, 182, 196.

#### *Alguacil, Mayor, or Provost Marshal.*

This officer is appointed by the Governor and removable by him. He gives security in £2000.

He is paid by fees according to the tariff, and executes process, &c. in the different districts of the island, by deputies appointed by him.—Trin. Comm. Rep. 26, 186.

#### *Cabildo.*

The "Illustrious Cabildo," as it is termed, of the town of Port of Spain, may be described as being in the nature of a corporate body and possessing the right of making certain municipal laws and regulations.

Its powers originally were very extensive, and certain of its members (for instance, the Regidors, who had equal rank and honours with the nobility,) were entitled to great *privileges*.

One of these, it is said, was the power to suspend the execution of any of the orders of the government that might be deemed impolitic or unjust, until a representation could be made to the Sovereign; and on the proposed introduction of the Order in Council, 10th March, 1824, for regulating the treatment of slaves, application was actually made to the Cabildo to exercise their powers, which they very prudently declined to do. Since, however, Trinidad has been in possession of the English, and a council has been established, the greater part of those

functions (of such at least as under the new system it was found desirable to retain,) have been transferred to the Governor and Council. And the powers of the Cabildo seem at present to be confined entirely to matters of minor police, such as to regulate the price of provisions, the cleanliness of the markets and streets, the construction and repairs of high-roads and bridges, &c. &c.

The Cabildo is composed of the Governor, two Alcaldes in Ordinary, the Procurator Syndic, and ten Regidores. Of the latter, two have been rendered perpetual by the present Governor, the others, like the alcaldes, serve in rotation, four going out of office annually, after having, in conjunction with the remainder of the Cabildo, elected four others as their successors, whose names are then submitted to the Governor for his approval.—Trin. Comm. Rep. 50.

#### *Gaol Attorney.*

This officer is appointed and removeable by the Cabildo, or city corporation; he has a salary of £300, but no fees. He is liable for escapes. In certain cases he acts on behalf of prisoners as their advocate, though he is not a lawyer. He never receives a prisoner without a written commitment stating the nature of the offence.—Trin. Comm. Rep. p. 27.

#### *Persons of Colour.*

Free persons of colour can sue and be sued, and labour under no disqualification as regards their evidence.

They are tried for capital and lesser offences as white and other persons are, and in the manner prescribed by the Order in Council, 16th September, 1822.—Rep. Trin. Comm. 28.

#### *Particular Laws.—Ganancias.*

The right of the wife to a partnership in the property acquired during marriage by onerous title, is termed "ganancias." This right is founded on the partnership or society supposed to exist between the husband and the wife; because she, bringing her dote, gift, and paraphernalia into co-partnership, and he, his estate and property which he possesses, it is directed that the gains resulting

from the joint employment of this capital be equally divided between both partners.

“Ganancial property is all that which is increased or multiplied during marriage by onerous cause or title, and not that which is acquired by a lucrative one, as inheritance, donation, &c.

“Immediately upon a division being made of this ganancial property, each acquires an absolute dominion as to their moieties.

“All property of the husband and wife is presumed common or *ganancial*, until it be proved to be the separate property of either.

“Prize money obtained in war by the husband is not *ganancial*, unless his outfit as a soldier for the campaign was at the joint expense of husband and wife.

“The fruits, proceeds, or rents of every description of property belonging to both husband and wife, are considered *gananciales*.

“The crime of one does not forfeit the property of the other in the ganancial partnership.

“Gains and losses being common, the debts contracted during marriage are to be paid out of the common property.

“But if the wife renounces the *ganancias*, she does not pay half the debts.” *Nova Recop* and *Fue Real*.—Trin. Comm. Rep. 34, 35.

#### Wills.

It appears that there is no Court of Ordinary at Trinidad, but that wills are proved before the Governor under the 8th clause of the proclamation of 5th February, 1814, and that there is no provision for appeal in case of his refusal to receive a will for proof; nor indeed can there well be, when he is the sole judge of the Court of Appeal in the island. This seems to call for some remedy.—Trin. Comm. Rep. p. 51.

There are two sorts of wills, open (*abierto*), and closed (*cerrado*). The open or nuncupative will ought to be executed before a public escribano and three witnesses (7)

(7) By Order in Council, 8th June, 1816, all wills, &c. made within the island of Trinidad shall be attested by three male witnesses, domiciliated

inhabitants of the place and quarter wherein the same shall be made, or two such witnesses and the commandant of such quarter.

inhabitants; and if the testator is blind, five are necessary; and if there is no escribano, five witnesses of the place are necessary, or seven non-residents. The closed or written will, which is made in secret, is delivered to the escribano, signed on the outside by the testator and seven witnesses, with the attestation of the escribano.

The spendthrift cannot make a testament. He shall be prohibited by the judge from alienating his property.

With respect to the mode in which a testator may dispose of his property, it is an indisputable principle of the laws of Castile that if he have children or grand-children he must necessarily institute them his heirs, and can only dispose in favour of strangers (among whom collateral relations are included) of the remnant, of one-fifth of his property. In default of these descendants he must devise his property in favour of his ascendants, father, grandfather, &c., with the exception of one-third.—Johnston's Inst. of the Laws of Spain, 110 to 115.

#### *Mortgages and Hypothecations.*

These are treated alike by the Spanish law, except that the subject of mortgage is considered incapable of delivery, while the subject of hypothecation may be delivered.

The person to whom the pledge is made acquires, 1st, a right in the thing constituted a security for the sum due; 2d, It is to be considered a species of alienation; 3d, The creditor may sell the pledge (upon notice) unless he is paid the debt.

The thing being once mortgaged cannot be mortgaged a second time, except to the amount which it may exceed in value the first debt. He who mortgages property already mortgaged shall be fined, if he acted from bad faith.—Johnston's Inst. Laws of Spain, 156 to 162.

#### *Prescription.*

There is a prescription of three years as to the possession of personal property, (except with mortgagees or lessees, who being in upon the title of another can never prescribe against him,) and the salaries or wages of apothecaries, spice-vendors, and other tradesmen or mechanics, in respect of their wares and work, and likewise as to the fees of advocates and solicitors.

There is a prescription of ten years in which real property is acquired among persons present, and in which the executive action is barred. Another of twenty years, which prescribes the right of absent persons to real property, and the personal action and execution granted thereon.

Actions, real, hypothecary, and mixed, are prescribed in thirty years.—Johnston's Inst. Laws of Spain, 105 to 109.

### *Proceedings in Cases of Bankruptcy and Concursos.*

By the ancient Spanish law on this head, the insolvent debtor is at liberty to make a cession of his property, which is termed *concurso voluntario y preventivo*; and any person, whether a trader or not, may adopt this measure.

But when the cession takes place at the instance of the creditors, it is termed *concurso necesario*. In both cases the property is distributed, and the creditors ranked under a judicial proceeding which is termed a *concursum creditorum*.

By Order in Council of 5th August, 1822, all future privileges or preferences, for repairs or supplies, are declared to cease; and by the same order, reciting the previous ones in this matter, all sugar, coffee, cocoa, or other estates are rendered liable to be taken in execution without regard to the value of the estate or the amount of its debts, but it gives the court a discretionary power of staying the sale of the whole, or any part thereof, under equitable circumstances.

Some doubts having arisen under that clause of this order, which gives the court a discretionary power of staying sales, without any limitation of time, it was by a subsequent order of February 2d, 1825, declared that it should not be competent to the court to stay the sale of the whole or any part of the estate at any time for a longer period than six months, or for more than two years on the whole.—Trin. Comm. Rep. 51, 52.

### *Execution.*

All instruments, promissory notes (*vales*), and writings acknowledged by the debtor, are entitled to prompt execu-



tion. In the same manner are bills of exchange, as against the acceptor, after being accepted, and against the drawer, provided they be protested and he acknowledge them.—Johnston's Institutes of the Laws of Spain, 352, 353.

#### *Costs.*

It appears that the advocates charge what they please for retainers, conferences, writing of letters, &c., and that such costs are never taxed.—Trin. Comm. Rep. 53.

#### *Coroners.*

The office of Coroner does not exist in this colony.—Trin. Comm. Rep. 54.

#### *Arrests.*

There is no power of arrest in this colony upon *mesne process*, except on the authority of the Roman law, when the party is *suspectus de fugâ*. Each person about to leave the country must obtain a pass from the Governor, and advertise his intention to leave, which advertisement may be underwritten and stopped at the secretary's office by any creditor.—Trin. Comm. Rep. 54.

## HONDURAS. (1)

THIS possession of Great Britain, though one of considerable extent and importance, has not yet been dignified with the name of a colony. On one occasion it was expressly decided not to be entitled to the appellation of a territory belonging to His Majesty, at least so far as the Navigation Acts were concerned. (Chitty on Commerce, vol. 1, p. 636.) According to this decision ships built there would not be privileged to engage in the direct trade between the United Kingdom and the British possessions in America. The recent Navigation Acts have removed this disability, and have in terms recognized the settlements at Honduras as "British." The 3 & 4 Wm. 4, c. 54, s. 14, expressly enacts "that all ships built in the British settlements at Honduras, and owned and navigated as British ships, shall be entitled to the privileges of British registered ships in all direct trade between the United Kingdom or the British possessions in America and the said settlements."

The settlement at Honduras is governed by an officer styled a Superintendent, who is appointed by the Crown. A constitution, sanctioned by an officer in commission under His Majesty, framed many years ago, has been since tacitly at least recognized by the Crown, and is still acted upon; and as a decisive mark of the subordination of the settlement to the power of this country, appeals are entertained by the Privy Council from the decisions of the courts in the settlement, one of which has been constituted by two acts of the British Parliament. (2) Although, therefore, it still continues inferior to our acknowledged colonies in titular dignity, it may well deserve some notice in this place.

The settlement of Honduras is situated in the province of Yucutan, between the seventeenth and nineteenth degrees

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(1) See ante, p. 1, n. (1) and p. 19.

(2) 3 Rep. W. I. C. 2d series, p. 3, 14. See post, 329.

of north latitude, and the eighty-ninth and ninetieth degrees of west longitude. The line which includes it commences at the mouth of the Rio Hondo, follows the course of, and afterwards runs parallel with that stream for about thirty miles, then turning southward passes through New River Lake in a straight line to the river Balize, up which it ascends for a considerable distance, and then again proceeds south till it reaches the head of the Sibun, the windings of which river it pursues to the coast. (3)

#### HISTORY AND CONSTITUTION.

From the earliest period of the settlement up to 1763, the right of cutting logwood in the Bay of Campeachy was a matter of vehement dispute between the English and Spanish governments on behalf of their respective subjects. On the general pacification, which took place in that year, the King of Spain agreed to allow the settlers to reside within a certain distance on condition that all the fortresses then existing should be destroyed, and that no other should be erected. On his part he undertook, in case of a war, to grant six months for the removal of British property.

In 1779 this undertaking was grossly violated. At the close of the war which then ensued, the settlers, though they obtained no indemnity for the previous injury, were re-established on the same terms as formerly, and the rivers Balize and Hondo were assigned as their limits. By a convention which was concluded with Spain in 1786, these limits were extended southward to the Sibun, in consideration of the British relinquishing their establishments on the Mosquito shore. Honduras was not mentioned either in the treaty of Amiens or at the general pacification in 1815; but though the right of Great Britain was not on either of these occasions recognized, neither was it disputed; and the fact that it was not expressly referred to, affords a strong ground for believing that it was considered, by the persons who negotiated these treaties, as a settled acquisition of England, and therefore no more required to be recognised as such than did Barbados or Jamaica, or any other long

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(3) 4 B. Edw. 254.

acquired and undisputed possession. There seems therefore but little ground for the alarm felt by the settlers at not having been mentioned at the peace of Amiens, nor the doubts that some of them are believed to have entertained in consequence of the similar omission of all notice of the settlement in the treaty of 1815, the more so since the condition on which their right to a settlement was recognised, namely, the relinquishment of the establishments on the Mosquito shore, has been strictly performed.

In the year 1765 the inhabitants agreed to a code of regulations presented to them by Sir William Burnaby, the commanding officer of His Majesty's ships on the Jamaica station, to the strict performance of the articles of which code they bound themselves by an instrument under their hands and seals.

In pursuance of these regulations five of the principal inhabitants were chosen from amongst themselves as magistrates, who were invested with power and authority to hold courts of justice, and to try and determine all disputes. A jury of thirteen was chosen in the same manner for their assistance, and the determination of this court was declared to be final.—3 Rep. 2d series, W. I. C. p. 3.

They further covenanted together to abide by and obey all such orders and regulations as might thereafter be made by the justices, in full council, being first approved of by a majority of the inhabitants; and that the commanding officer for the time being of any of His Majesty's ships of war which might be sent thither, should have full power to enforce and put the above into execution. Regulations were at the same time agreed to respecting the levying and collection of taxes, the cutting of logwood, &c. &c.

This code, which bears Sir William Burnaby's name, was printed at the expense of the settlement in 1809, with such additional regulations and alterations of the original articles as had in the intermediate time been found necessary.

Since the last named period, further additions to this code have from time to time been made by the inhabitants at their public meetings,—by committees chosen for that purpose,—and by the magistrates presiding in the several tribunals which were created as above mentioned; which regulations, though of course they cannot exactly be con-

sidered as having the effect of law, any more than the original code, are yet by common consent of the inhabitants deemed to be binding upon them, and as such are strictly acted upon and enforced. It may not perhaps be altogether improper to state here briefly, the course which is generally pursued when an individual of the community is desirous of introducing a new regulation which is to undergo the solemnity of an "enactment." Such individual causes a public notice or requisition to be posted at the court-house at Belize, calling a meeting of the magistrates and inhabitants of the place, on the particular day expressed in the notice, which it is understood must be stuck up at least twenty-one days before the day named for the meeting. On the arrival of the day appointed for the purpose, the magistrates and inhabitants assemble, when the proposition contained in the notice is discussed, and the majority of those present on the occasion determine the question; after which, if the measure agreed to at the meeting receive the assent of the Superintendent, it is considered a law of the settlement, but not otherwise.

In this anomalous state of things, say the commissioners, it is a matter of considerable surprise that the meetings dignified with the name of courts should be conducted with a regularity and decorum which will bear no disadvantageous comparison with the proceedings, in this respect, of the regularly constituted tribunals in most of the colonies visited under the commission.—3 Rep. W. I. C. 2d series, p. 4.

#### COURTS IN GENERAL.

The only court that can strictly be said to be legally constituted in this settlement is that created under authority of the British Acts of Parliament 53 Geo. 3, c. 53, and 59 Geo. 3, c. 44, for the trial of murders, manslaughter, rapes, robberies, and burglaries.

The other tribunals in which criminal and civil justice respectively are administered, are courts instituted by agreement of the inhabitants among themselves about the year 1787. The titles and jurisdiction of these latter were described as follows:—

The Grand Court, instituted by an enactment of the public meeting for the recovery of debts above the sum of

£10, trespasses, assaults, and batteries, actions of damage, and attachments.

The Summary Court for the recovery of debts of £10 and under, and assaults of a minor degree.

There is no Court of Vice-Admiralty here; and in answer to questions on this head, the commissioners were told that when cases occur requiring the decision of such a court they are sent to Jamaica, to the very great inconvenience of the settlement.

The law of England, it was said, was always applied, "except where local circumstances prohibited its application," and on inquiry from what source the settlers derived their local laws, the commissioners were answered, "from the establishment of the settlement, and before the British government gave it protection, the inhabitants formed an assembly for the enactment of laws, which remains in existence to the present period; but since the granting protection by the British government it has been invariably the custom to obtain the sanction of His Majesty's Superintendant, who possesses the power to allow or disapprove of such part as he shall deem fit." This is the form of government created by the inhabitants themselves and described above.

The English act, 5th Geo. 2, c. 7, "for the more easy recovery of debts in the plantations," is considered in force here, and "practically acted upon."

The writ of *habeas corpus* is not known in the settlement, and in the event of illegal imprisonment the usual method of redress is described to be "by an action of damages issued out of the Grand Court, and addressed to the provost marshal general."

Bail is said to be admissible here "according to the law of England."

The principles of the English law of descent are said to be applied here; but there is no such thing as freehold property known in the settlement, British subjects being supposed (though it would seem erroneously, see ante, 327,) to possess no territorial rights there.

The laws which in England govern the distribution of personal property in cases of intestacy, are also acted upon here, with this peculiarity, that where no legitimate heir appears, "illegitimacy inherits by next of kin."

In the event of persons in the settlement dying without a will when the (known) heirs or next of kin are absent,

the magistrates, "acting as a Court of Ordinary, issue letters of trust," and take "security from the trustees and examine their accounts annually."

They also, in the execution of the same functions, exercise the power of appointing guardians when necessary, taking bonds to ensure the faithful administration of their trust, examining their accounts, &c.—3 Rep. 2d series, W. I. C. p. 4.

In the case of wills, the only proof required seems to be that of the testator's signature before the magistrates acting as a Court of Ordinary, if the will be in the settlement; if in a foreign country, before a competent tribunal. Wills are required to be recorded.

Nuncupative wills are admitted agreeably to the practice in England; and there are no restrictions or limitations to the power of disposing of property, real or personal, by will.

As regards powers of attorney, if they are executed according to the forms of the country in which they are made, they are held good and valid in the settlement.

No counsel, attornies, or solicitors act professionally in any of the courts here, nor indeed are there any in the settlement, as no encouragement is afforded them, the parties interested in the suits appearing and being heard in person.

Persons incapable of paying the necessary expenses of a suit are allowed to prosecute and defend their claims in the courts at the expense of the settlement.

No marriage can be celebrated here without a license first obtained from His Majesty's Superintendent or publication of the banns; and the widow is considered as entitled to one-third of the whole property of the deceased after payment of his debts.

The rights of the Crown are, it is said, vested in the person of the Superintendent.

The courts of the settlement will respect and confirm the judgments of foreign courts of competent jurisdiction, in all cases except that of outlawry. Six months' residence in Honduras is required before a stranger, though a British subject, is considered to have acquired a right of establishing himself in trade as an inhabitant.

There are no regulations in this settlement similar in principle or effect to the English bankrupt laws.

Twenty-one days' notice of intention to depart is re-

quired to be given before a person can leave the settlement, and it is also necessary to obtain a pass from the Superintendent.

Creditors can prevent such departure by entering a *caveat* in the secretary's office, but they may be called upon in this case, at the superintendent's discretion, to give security to answer condemnation in costs and damages, upon subsequent judicial proceedings on the part of the person whose departure is so prevented.—3 Rep. 2d series, W. I. C. 5.

### *High or Supreme Commission Court.*

The judges (none of whom, it may be remarked, receive any salary or other emoluments of office,) are directed by the act 59 Geo. 3, c. 54, to be "such four or more discreet persons as the Lord Chancellor of Great Britain, Lord Keeper, or Commissioners for the custody of the Great Seal of Great Britain, shall from time to time think fit to appoint" in the manner therein specified. By virtue of this power, a commission under the great seal has been issued, nominating seven persons to try, hear, determine, and adjudge the crimes therein enumerated, any three of the said persons constituting a court.

The judge advocate, who is also appointed by the judges of this court, conducts all prosecutions. A grand jury, to the number of thirteen, is impannelled, being selected from a number summoned by the provost marshal general from amongst the most respectable inhabitants of the settlement.

They choose their own foreman, and are sworn by the same form of oath as is prescribed in England.

The bills of indictment are sent to them from the court by the hands of the officer of police, who is sworn as keeper of the grand jury.

It appears to be the practice of the grand jury to examine witnesses, both on the part of the Crown and the accused.

A petit jury, to the number of twelve, is also summoned for this court by the provost marshal general; they are chosen in the usual way by ballot, and sworn before the



court; the prisoner having the same power of challenge in respect to them as is accorded by the law of England.

The prisoner may likewise enforce the attendance of his witnesses by a writ of subpoena. It seems to be unusual, except in particular cases, to allow witnesses their expenses.

The Superintendent of the settlement, acting as president of the court, pronounces its sentence; and he, it appears, has hitherto exercised the power of reprieve and pardon.

A prisoner when acquitted is immediately set at liberty, and is liable to no charge for fees, the public paying all expenses.

The following are the officers of this court, who are all appointed by the judges thereof; *viz.* the judge advocate, the clerk of the court, the assistant clerk of the court, the provost marshal general, and the police officer.

The salary of the judge advocate is fixed at £50 (currency) for every court that is held; the other officers have no salary, but their emoluments arise from fees.—3 Rep. 2d series, W. I. C. p. 6.

#### *Grand Court.*

The magistrates who act as judges in this court, are appointed annually to the number of seven; but three are held sufficient to form a court. They are chosen from among those inhabitants considered best qualified to fill the situation, and their services are gratuitous. They sit three times a year, in the town of Belize, taking cognizance as a court of criminal jurisdiction of all offences not specified in the commission constituting the Supreme Court, with the exception of minor assaults, which are tried in the summary courts; and, as a court of civil jurisdiction, “of all matters of debt above the sum of £10, trespasses, actions for damages, &c.”

The proceedings of this court, on its criminal side, are similar to those in the Supreme Commission Court, with the exception that there is no grand jury, though there is a petty jury. Its judgments have hitherto been final, but the prisoner is not debarred the privilege of appeal to His Majesty's Superintendent. It seems not to be the prac-

tice, except in particular cases, to allow their expenses to prosecutors or witnesses.

As a court of civil judicature, the magistrates sit three times a year, taking cognizance, as has been already stated, "of all matters of debt above the sum of £10, trespasses, actions for damages, &c."

It also tries titles to land (4) by writs of replevin. Actions, however, for the recovery of debts, are the most prevalent; and debts by specialty and on simple contract are proved in the usual way.—3 Rep. 2d series, W. I. C. 7.

All cases are decided by juries, the jurors being chosen from the white population, British subjects, and domiciliated in the settlement.

No arrest before judgment is permitted here.

The awarding the costs in civil actions is considered to be the province of the jury, who "usually express the same in their verdict."

Costs, it is said, are limited by the law of the settlement.

The court considers itself entitled to grant equitable relief against the strict rules of law, when a case is made out for the exercise of such power.

Five hundred pounds is the lowest sum in dispute for which appeals to the King in Council are held allowable, according to the general tenor of His Majesty's instructions, in this respect, to the Governors of his several colonies.

There is no regulation in this settlement in the nature of an Insolvent Act, nor is there any time prescribed for the discharge of prisoners whose debts are under £100.—3 Rep. 2d series, W. I. C. 8.

#### *Summary Court.*

One of the magistrates of the settlement acts as judge of this court, and sits once a month in the town of Belize, to dispose of actions where the sum in dispute is under £10, in which case a jury of three is impannelled. The same judge also disposes of assaults and minor offences,

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(4) Possessory titles only. See ante, 327, 350.

when the jury must be composed of twelve persons.—3 Rep. 2d series, W. I. C. 9.

#### *Free Coloured Persons.*

The only disabilities experienced by this class of the inhabitants of Honduras is that they are not considered eligible to fill the office of magistrate or juror. The mode of proceeding against them in the criminal court is precisely similar to that adopted in the case of other free persons.

No commixture of the blood of whites with that of coloured persons is considered here, as it is to a certain extent in Jamaica, to give a title to freedom.—3 Rep. 2d series, W. I. C. 11.

#### *Magistrates.*

The magistrates of this settlement are annually elected, to the number of seven, at public meetings of the inhabitants themselves, and their services are gratuitous. Their election is subject to the approval of the Superintendent, who would remove them in the event of misconduct.—3 Rep. 2d series, W. I. C. 11.

#### *Provost Marshal and Gaol.*

The provost marshal of this settlement holds his appointment under a commission from the Superintendent, who would remove him in the case of neglect of duty or misconduct.—3 Rep. 2d series, W. I. C. 11.

#### *Clerk of the Supreme and Lower Courts, and Keeper of the Records.*

These offices are executed by the same individual, in conjunction with an assistant; both of them are appointed by the Superintendent at the recommendation of the magistrates.

Before registering a deed or will, proof is required of the signature, either of the person who has executed the same, or of the subscribing witness or witnesses thereto, and after registry the original instrument is returned, on application to the party who had lodged it.

No wills, it is stated, are received for record until after the death of the testator.—3 Rep. 2d series, W. I. C. 12, 13.

#### *Coroner.*

By the custom of this settlement the junior magistrate, or, in his absence, another of the magistrates, performs the duty of coroner. His services are gratuitous. The formalities usual in England seemed to be observed on the proceedings on inquests here, and the coroner is vested with the powers of the same officer in England, in regard to summoning witnesses, committing if necessary, and the like. No new regulations on this head appear to be required.—3 Rep. 2d series, W. I. C. 13.

#### *Notary.*

There is a notary in the settlement, whose appointment is derived from the Prerogative Court of Canterbury. In the event of his death or absence, protests are made before the magistrates, and if extended, are signed by three of the same functionaries, and a certificate from the Superintendent is annexed.—3 Rep. 2d series, W. I. C. 13.

#### *Police Officer.*

This officer is appointed and removable by the Superintendent, with a salary of £60 and certain fees. In addition to the functions usually prescribed to such an officer, he has charge of the prisoners confined in the gaol, and superintends all punishments and carries into execution all sentences of the Criminal Court, except those decreeing death.

He also executes all the official orders of the Superintendent and the magistrates.—3 Rep. 2d series, W. I. C. 13.

#### *Arbitrations.*

Arbitrations appear to be frequently resorted to in this settlement; the arbitrators being appointed by the court and their award being entered up as its judgment, which is then enforceable by writ of execution.—3 Rep. 2d series, W. I. C. 13.

*Appeals.*

No appeal will lie to the King in Council from the judgment of any of the courts for a less sum than £500 sterling, in the computation of which sum costs are not included. Only one instance of such appeal, it appears, has ever been known here, and in that case "it was never decided upon."

The commissioners say they could not collect with certainty whether any intermediate appeal, or for what sum, would lie to the Superintendent.—3 Rep. 2d series, W. I. C. 14.

## JAMAICA.

JAMAICA, which, according to Mr. Bryan Edwards, (1) "since the loss of America, has always been justly reckoned the colonial gem of the British Crown," now demands our attention. It was discovered by Columbus upon his second voyage, on the 3d of May, in the year 1494, when coasting round Cuba with a view to discover whether that place was an island or a part of the mainland. (2) The name is said to be Indian, and to signify a country abounding in springs.

Jamaica is situated in the Atlantic Ocean in about 18° 12' north latitude, and in longitude about 76° 47' west from London. (3) The north and south sides of the island are separated by a chain of mountains extending from east to west. Its chief natural productions are sugar, indigo, coffee, and cotton; but it produces many other valuable commodities in sufficient abundance. It is 150 miles in length, and, on a medium of three measurements at different places, about forty miles in breadth. According to Mr. Edwards's statement 1,740,000 acres were cultivated, and, including the superficies of the mountains, it was supposed to contain altogether about 4,000,000 of acres. (4)

The island of Jamaica is divided into three counties, named Middlesex, Surry, and Cornwall. The first is composed of eight parishes, one town and thirteen villages. The town is that of St. Jago de la Vega or Spanish Town, the capital of the island. It is situated on the banks of the Cobre, about six miles from the sea. The Governor has a handsome place in the town, and the House of Assembly and the Courts of Justice are also held in it. The county of Surry contains seven parishes, two towns and eight villages. The towns are Kingston and Port Royal. The

(1) 4 B. Edw. 249.

(2) 1 B. Edw. 152, 153.

(3) 1 B. Edw. 193, 197, and the authorities there referred to.

(4) 1 B. Edw. 237 to 260.

former was founded in 1693. Cornwall contains five parishes, three towns and six villages. The towns are Savanna le Mar, Montego Bay, and Falmouth.

#### HISTORY AND CONSTITUTION.

Columbus took possession of the island on the 4th of May, 1494. Nearly nine years afterwards, on the 24th of June, 1503, he was shipwrecked on this island in a place called to this day Don Christopher's Cove. He remained on the island above twelve months. When, after the death of Columbus, the claims of his son were tardily recognized by an ungrateful sovereign, Don Diego Columbus set out for his government of Hispaniola, to which Jamaica was then attached, and he appointed as his deputy in Jamaica Juan de Esquivel, who, as he was the first, so he seems to have been the best Spanish Governor of the island. This governor founded a city, which he called Nueva Sevilla, and which appears to have been destroyed or deserted about the year 1525. Another city was then founded by Don Diego Columbus, who gave it the name of St. Jago de la Vega, a name that about twenty years afterwards was adopted as the title for a marquisate for his eldest son and heir, as one of the terms on which that noble person surrendered to the Emperor Charles V. the almost regal privileges which had been in form conferred upon Christopher Columbus, but which, though not capable of being legally disputed by the Spanish monarchs, had been shamefully usurped for the advantage of their favourites. The city is now called Spanish Town and is the capital of the island. The Spaniards do not appear to have successfully developed the resources of the island, for we are informed that at the time of its capture, in May, 1655, by the English forces sent out by Cromwell, there were only about 1500 inhabitants, including women and children; that many of the valuable commodities which Jamaica has since produced in such great abundance, were either altogether unknown, or very scantily cultivated; and that the principal export, besides cacao, consisted of hogs' lard and hides. For some time after the capture of the island the English remained under military jurisdiction. A most interesting account of the condition of the island, and of the efforts made to settle and improve it by the Protector, is to be found in the admirable

work of Mr. Edwards, who gives to that able ruler the honour of obtaining and securing this valuable and important possession, and to Colonel D'Oyley the credit of having zealously and nobly seconded his efforts. Immediately after the restoration, Charles 2, confirmed Colonel D'Oyley in the command by a commission which bore date the 13th February, 1661. The commission directed him to erect Courts of Judicature, and, with the advice of a council to be elected by the inhabitants, to pass laws suitable to the exigencies of the colony. Lord Windsor was afterwards appointed Governor, and carried over a proclamation containing a declaration by the Crown that all free born subjects in Jamaica should, from their respective births, be reputed to be free born denizens of England. By the treaty of 1670, the island of Jamaica was formally ceded by Spain to England, "together with all lands, countries, islands, colonies, and dominions whatever, situated in the West Indies or any part of America, which the King of Great Britain and his subjects did then hold and possess." In 1678 an attempt was made by Charles to govern this island by laws passed in the Privy Council. The scheme is described by Mr. Edwards (5) in the following words,—“A body of laws was prepared by the Privy Council of England, among the rest a bill for settling a perpetual revenue on the Crown, which the Earl of Carlisle was directed to offer to the Assembly, requiring them to adopt the whole code without amendment or alteration. In future the heads of all bills (except money bills) were to be suggested, in the first instance, by the Governor and Council, and transmitted to His Majesty to be approved or rejected at home; on obtaining the royal confirmation, they were to be returned under the great seal in the shape of laws, and passed by the General Assembly, which was to be convened for no other purpose than that, and voting the usual supplies; unless in consequence of special orders from England.” The success of the experiment upon Barbados (6) had probably stimulated the King and his ministers to this attempt, which in grossness, indeed, exceeded the former. The people of Jamaica, however, possessed three advantages over their brother colonists of Barbados; they had an existing As-

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(5) 1 B. Edw. 221.

(6) See ante, 178.



sembly lawfully established,—their titles to their lands could not be impeached under a fraudulent grant to a court favourite,—and there had been a degree of re-action in the minds of the English people, who were no longer so eager to please royalty at the expense of all that was just or honest, as they had been when Charles first returned among them. Thus assisted by circumstances the colonists were successful in their resistance. The great object in view was to obtain from Jamaica the settlement of a perpetual revenue, and this object was adopted by all the successive ministries from the time of Charles 2. to that of Geo. 1, and was constantly, but vainly, endeavoured to be enforced. At length, in 1728, a compromise was effected. The Assembly consented, upon certain conditions, to settle on the Crown a standing irrevocable revenue of £8000 a year. The first of these conditions was that the quit-rents arising within the island (then estimated at £1460 per annum) should constitute a part of such revenue. The second and third conditions were of more importance. In order to compel submission to their will the different ministries had recommended the Crown to suspend from time to time the confirmation of the laws passed by the Assembly, and it was also left in doubt whether any and what part of the common and statute law of England was in force in the colony. It was therefore stipulated, 2dly, that the body of their laws should receive the Royal Assent, and 3dly, that “all such laws and statutes of England as had been at any time esteemed, introduced, used, accepted, or received as laws in this island, should be and continue the laws of Jamaica for ever.” The conditions were agreed to, and the Revenue Act of Jamaica was passed.

Each parish, or precinct, consisting of an union of two or more parishes, is governed by a chief magistrate, styled *Custos Rotulorum*, and a body of justices unlimited by law as to number.

The vestries are composed of the *custos* and two other magistrates, the rector and ten vestrymen. The latter are elected annually by the freeholders.

The legislature of Jamaica is composed of the Captain-General or Commander-in-Chief, of a Council nominated by the Crown, consisting of twelve gentlemen, and a House of Assembly, containing forty-three members, who are elected by the freeholders, namely, three for the several

towns and parishes of St. Jago de la Vega, Kingston, and Port Royal, and two for each of the other parishes. The qualification required in the elector is a freehold of £10 per annum in the parish where the election is made; and in the representative a landed freehold of £300 per annum in any part of the island, or a personal estate of £3000.

The Governor receives £2500 per annum out of the £8000 fund. A further salary of £2500 is settled upon him during his residence in the island, by special act of the legislature passed at the beginning of his administration, and is made payable out of some of the annual funds provided by the Assembly.

In certain emergencies the commander-in-chief, with the advice and consent of a general council of war, (in which the members of the Assembly have voices,) may proclaim martial law. His power is then dictatorial, and all persons are subject to the articles of war. (7)

#### COURTS IN GENERAL, AND THE LAWS THEREIN.

The courts established in this colony for the administration of criminal and civil justice, are the High Court of Chancery, the Courts of Appeal and Error, the Supreme Court of Judicature, the Court of Assize, Oyer and Terminer and Gaol Delivery for the counties of Surry and Cornwall, the Court of Ordinary, the Court of Vice-Admiralty, the Vice-Admiralty Sessions, a Court of Quarter Sessions, a Court of Common Pleas in each Parish (except the parish of St. Catherine), and a court for the trial of Maroons, and a Slave Court in each parish.

#### LAWS. (8)

By the Colonial Act 1 Geo. 2, c. 1, all such laws and

(7) The facts stated in the above account are taken from different parts of Mr. Edwards's History, vol. i. pp. 201 to 236, and 260 to 285. See also 1 Rep. W. I. C. 2 series, p. 6 to 10, for a sketch of the constitution of Jamaica.

(8) See ante, p. 3 to 16, on the general topic how far the colonies are

subject to the law of the mother country.

It may here be mentioned, that in the extracts from the Commissioners' Report on this Colony, whenever the word "acts" occur, unless otherwise expressed, Colonial Acts are meant.

Whenever the word "pounds" oc-

statutes of England as had theretofore been acted upon in Jamaica, are made perpetual; and it may be stated generally, that the statute law of England (not being at variance with the acts of the colony) is acted upon in most cases of manifest convenience, as in the execution of wills, limitation of actions, &c. But British statutes passed since the 1 Geo. 2, are not in force, unless extended by express terms to the colony, "or unless," added the Attorney-General, "they relate to trade and navigation, or to the law-merchant, or are in aid, or are amendments of the common law."

The common law of England prevails as far as local circumstances permit, and when it is not at variance with the Colonial Acts.

#### COLLECTION OF LAWS.

The public acts are printed by commissioners appointed by the legislature. They are complete to the close of the session of 1825. Private acts remain in manuscript.

The originals or manuscripts of all acts, public or private, are deposited and recorded in the secretary's office, where they may be consulted or transcripts obtained on payment of the island secretary's fees, as regulated by the 56th Geo. 3, c. 19, and the 6th Geo. 3, c. 23.

Copies of the acts are sent to His Majesty's Secretary of State for the Colonial Department, and to the clerk of the Privy Council.—1 Rep. 2d series W. I. C. 44.

#### *Governor.*

To an inquiry whether the Governor had the power of committing and continuing persons in prison, and delaying their trial, the commissioners were told he had not, "except," said the chief justice, "in the case of aliens,

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curs, it is to be understood, unless otherwise expressed, as meaning "pounds currency of Jamaica." The proportion between that currency and the currency of England is as follows: viz. £140 of Jamaica currency is, in ordinary calculation, equal to £100 sterling; and consequently £1 currency represents about 14s. 3d. ster-

ling;—but in large transactions the course of exchange varies, and is regulated by the current premium or discount on bills drawn on Great Britain, a variation, which, entirely independent and exclusive of the ordinary exchange above mentioned, has extended, at different periods, to upwards of 30 per cent.

whom he may, under the provisions of the Alien Act, 5 Geo. 4, c. 18, commit to prison and send off the island."

He has no power in civil cases of staying execution or suspending proceedings; but in criminal cases he can pardon, murder and high treason only excepted. In these he may stay execution till the King's pleasure be known. And Mr. Burge (the Attorney-General) remarked that, in criminal proceedings, as representative of the King, he may direct the Attorney-General to enter a *nolle prosequi*, or, by virtue of His Majesty's prerogative, might respite the execution of any sentence.

#### *Particular Laws of the Colony.*

The writ of Habeas Corpus is issued by the chancellor or judges of the Supreme Court in term time; and by the chancellor and a single judge of the Supreme Court in vacation. The proceedings are similar, and the writ is granted under the same circumstances as in England, "excepting" (the chief justice said) "in the case of a person committed under the Alien Act, who must in the first instance appeal for redress to the Governor in Council, and cannot apply for a *habeas corpus*, unless the appeal remain unheard for fourteen days."

The law of descent and the law governing the distribution of personal property, in cases of intestacy, do not differ from the law of England on those subjects.

Lands in the hands of the heir or devisee are assets, said the Attorney-General, for the payment of all classes of debts owing by the ancestor or testator, by means of a suit in the Court of Chancery on behalf of his creditors. And the chief justice stated, that they stand charged with specialty and also simple contract debts, when the latter have been put on judgment and notice of a writ of extent has been served pursuant to the 24th Geo. 2, c. 19.

He also referred to the (British) statute 5 Geo. 2, c. 7, by which lands in the colonies are made liable to satisfy *all* debts.

Personal assets, unless specially exempted, are always applied in the first instance in exoneration of the real estate; and in marshalling assets, slaves are considered and dealt with as personalty, next after the assets purely personal have been exhausted.

*Foreign Judgments.*

A judgment recovered in England, or elsewhere, by default, or *in contradictorio*, against a person resident in the colony, would be considered merely as evidence of the plaintiff's demand, and the chief justice believed that a foreign judgment "has always been received as evidence in the colony, without going into the merits on which it was pronounced." The *onus* of impeaching the judgment, said the Attorney-General, would devolve on the defendant.

There is no judgment of outlawry in this colony.

The foreign appointment of guardians to minors, and committees or curators to idiots or lunatics, would not give any control over property in the colony.

The Colonial Court of Chancery would exercise original jurisdiction in such cases; but examiners conceived, that from comity or courtesy, it would (in the absence of any other claim, said the chief justice,) confirm such appointment, and conform its orders to those of the Court of Chancery in England.

The chief justice apprehended that the disability attached to an idiot or lunatic, by virtue of the foreign appointment, would cease on his coming to reside in the colony, and that such foreign proceedings would be merely considered by the colonial court as evidence tending to invalidate his acts.—1 Rep. 2d series, W. I. C. 45.

And the Attorney-General remarked, that the Colonial Court of Chancery would revoke such appointment, when it was made to appear that such disability had ceased.

*Bankruptcy.*

With respect to the force of an assignment and certificate, under an English or foreign commission of bankruptcy, the chief justice declared that the colonial courts would give no effect to them against a creditor not claiming under the commission; but would, he apprehended, prevent a creditor claiming under it from pursuing the bankrupt personally.

On this subject the Attorney-General particularly referred to the judgment of Mr. Henry, when chief justice

of Demerara, in the case of *Odwin v. Forbes* (confirmed on appeal in the Cockpit), and remarked that the late chief justice of Jamaica had entirely adopted that authority, and held that the defendant's English certificate barred the plaintiff from recovering a debt owing to him in respect of a consignment made by him to the defendant resident in England; and added, "I take it now to be the law of this country that a similar effect would be given to a certificate when the debt was contracted in England."

And as to the force of the assignment, it was his opinion that "the title of the assignees would not be recognized with reference to the bankrupt laws; and their right to possess the property assigned to them would depend on the validity of the instrument assigning or conveying it, and not on any title under the bankrupt laws." From inquiry respecting the preference of claims between foreign and colonial creditors, (the latter having notice of the bankruptcy abroad,) the chief justice made this distinction,—that supposing the bankrupt to have been formerly in the island, but to be absent and unrepresented by attorney, the colonial creditors would, he conceived, as to personal property, obtain a preference by attachment under 23 Car. 2, c. 23; but if the bankrupt were resident in the island, or represented there, the same preference might be obtained, both as to the personal and real property, by putting the demand in suit.

After assignment under the foreign commission, the bankrupt would (according to the chief justice) be allowed to sue in the colony in respect of such property.

And supposing the assignees to be in possession of the bankrupt's property and his outstanding debts in the colony, by permission of the colonial court, under the foreign assignment, he apprehended that the foreign certificate would be no bar to the suit of any colonial creditor desirous of proceeding personally against the bankrupt (then in the colony) for debts proveable, but not proved under the foreign commission.

The chief justice considered that the notice of an insolvent debtor that he intended to take the benefit of the Insolvent Act was not sufficient for the protection of foreign creditors.

There is no law of the colony similar to the act 21 James 1, which makes personal property, left in the pos-

session and apparent ownership of a commercial person or trader, (not the real owner,) liable to the creditor of such person, in case of insolvency; neither is the above statute ever acted upon in the colony.

### *Marriage and Dower.*

A married woman is entitled to dower as in England, and to a similar provision (subject to her husband's debts) out of the slave property undisposed of in his lifetime; also to the provisions of the statute of distribution.

To the following question "What would be the effect of a marriage celebrated abroad, according to the law of the country where the same was had, between persons of real property in the colony, in regard to such property, in cases in which the law of the two places differs as to the effect of marriage on such property?" the chief justice replied, that the law of the colony would prevail.

In the case of the separate trading of a married woman in the colony, it was believed that the decision of the court would be governed by the common law of England.

In the case of a marriage celebrated abroad, where a law prevails which legitimates children born before marriage, such children would in this colony be considered illegitimate.

There is no jurisdiction in this colony competent to pronounce any sentence of divorce; and there is a positive instruction to the Governor to withhold his assent to any act of the legislature dissolving a marriage.—1 Rep. W. I. C. 2d series, 46.

### *Aliens.*

Aliens can maintain personal actions; they cannot hold real estates, but they may lend money on mortgage under 13 Geo. 3, c. 10. That act provides that on failure of payment the legal estate shall be vested in certain public officers, in trust for the alien, and that he may sue in their names.

Aliens may acquire the rights of British subjects by complying with the terms of the British statutes for the naturalization of foreign Protestants and others, but they are generally acquired by letters of naturalization from the Governor, under the provisions of the 35 Charles 2, c. 3.

*Wills.*

The statute of frauds extends to this colony, and a will devising real estates or slaves in the colony must be executed according to the manner prescribed by that statute, and its formalities would, the chief justice conceived, be requisite in whatever country the will might be executed.

In the case of a will made in the colony, and bequeathing personal property, the forms are the same as in England; but he apprehended that personal property in the island would pass under a will executed in a foreign country according to the laws of that country.

*Mortgages.—Registry.*

Mortgages in this island are conventional. The estate is generally conveyed in fee to the mortgagee, and the requisite forms and solemnities are the same as in England.

It is necessary to the validity of a deed that it be recorded in the secretary's office, and, as between the vendor or mortgagor and the vendee or mortgagee, it may be recorded at any time, and has, when recorded, relation back to its date; but as between the vendee or mortgagee, and subsequent purchasers or incumbrancers, it must be recorded within the time limited by law, (viz. ninety days,) otherwise he will lose his priority over them, if they have recorded their deeds within the limited time.—See acts 33 Car. 2, c. 12, 4 Geo. 2, c. 5, and the 16 Geo. 2, c. 5. It is not necessary to the validity of a will that it should be recorded, but the practice is to record it like a deed.

The chief justice was of opinion that neither actual nor constructive notice of a deed to a party claiming under an adverse title, would dispense with the necessity of a registry.

No court in this colony has, it appears, jurisdiction in any case, criminal or civil, to issue process of outlawry.—1 Rep. W. I. C. 2d series, 47, 48.

*Statutes of Limitations.*

The British statutes 31 Eliz. c. 5, s. 5, applying to penal



actions, and the 21 James 1, c. 16, and 4 Anne, c. 16, s. 19, respecting civil actions, extend to this colony. The island acts 10 Anne, c. 12, and 29 Geo. 3, c. 13, s. 4, declare bonds, judgments, bills, mortgages, or other writings obligatory, to be void, if no payment has been made, or if not demanded within twenty years from the time they became due, or from the last day of payment. There is a saving for infants and persons under coverture or of unsound memory, who must bring their action within three years after the disability removed.

#### *Arrest for Debt.*

A defendant may, in general, be arrested on mesne process in all actions upon civil contract or in tort, unless coming within the privileges of the Island Act, 35 Car. 2, c. 7. An affidavit must be made of the cause of action, and where the damages are uncertain, an order of the court or of a judge must be obtained as in England.

Special bail is required in all cases of arrest on mesne process.

The exemptions from arrest on mesne process are members of the legislature, persons possessing a freehold of five acres planted, or a house worth £10 per annum, and generally such as are exempted by the law of England.—See the above act 35th Car. 2.—1 Rep. 2d series, W. I. C. 48.

#### *Notice of Proceedings.*

No proceedings can be founded in the colonial courts upon process issued by them but served upon the party out of the colony.

With respect to proceedings against persons residing abroad, having property in the colony, it seems that if they have never been in the island, and are unrepresented, there is no remedy against them: and if having been once in the island they have left it, and are unrepresented, the only mode of proceeding is by foreign attachment under the 33d Car. 2, c. 23.

#### *Counsel.*

To the commissioners' inquiries respecting the qualification and admission of counsel to practise at the bar in

Jamaica, the chief justice gave as his opinion "that persons acting as counsel here must have been previously called to the bar in England."

An order to sue in *forma pauperis* may be obtained under the same circumstances and by the same mode of application as in England.—1 Rep. W. I. C. 2d series, 49.

### *Supreme Court of Judicature.*

This court was established under the royal instructions in the reign of Charles 2, and more completely secured in its present jurisdiction by an act of the legislature of the colony, 33 Car. 2, c. 23, s. 1.

Three judges are necessary to form a court. The chief justice is appointed by the Governor and confirmed by the King, and the other judges are appointed by the Governor. They all hold their offices during His Majesty's pleasure, but by the second clause of an act of the island, 21 Geo. 3, c. 25, and 57 Geo. 3, c. 17, may be suspended by the Governor (or person exercising the functions of governor) with the advice and consent of a majority of the council.

The chief justice's emoluments are fixed by the acts of 1 Geo. 2, c. 1, 43 Geo. 3, c. 25, 47 Geo. 3, c. 13, and 58 Geo. 3, c. 18; and those of the present chief justice amount to £5720 currency per annum.

The Attorney-General says the present chief justice's salary is £5600 currency, besides £120 currency from His Majesty's appropriated revenue, and that the salary of £5600 is given in lieu of all fees, perquisites, and emoluments.

Of the other three judges the two seniors alone derive any benefit from their offices. They each receive salaries of £700 per annum currency, under 51 Geo. 3, c. 27, and the two seniors of the Assize Courts £300 currency per annum each, under the same act.

Since the year 1803, the person appointed chief justice has been a barrister. From the summary of legislative provisions given by the Attorney-General, it does not appear essential to the appointment of chief justice with a salary of £4000 per annum, that he should be a barrister, though he must be such to be entitled to the additional salary of £1600 currency.

The assistant judges are generally appointed from the resident gentlemen of the island, and it is not required that they should have gone through a course of legal study.

By the (Colonial) Act of 33 Car. 2, c. 23, the court has cognizance of all pleas, civil, criminal, and mixed, as fully as the Courts of King's Bench, Common Pleas, and Exchequer in England.

The same judges preside whether the court sits under its criminal, civil, or revenue jurisdiction.—1 Rep. W. I. C. 2d series, 50.

*Criminal Jurisdiction and Practice of the Supreme Court of Judicature and Courts of Assize.*

The chief justice presides at each of these courts, and is assisted by two assistant judges.

The chief justice says these courts have the same power as the Courts of Assize, Nisi Prius, Oyer and Terminer, and Gaol Delivery in England, and their sittings cannot be continued longer than three weeks, but are generally closed in eight or ten days.

The judgments and proceedings of these assize courts, as courts of oyer and terminer and gaol delivery, are stated by the Attorney-General to be "independent of, and not under the control of the Supreme Court of Judicature."

The officers attending the Supreme Court on the criminal side are the Attorney-General, Provost Marshal, Clerk of the Court, and Clerk of the Crown.

In the Assize Courts the deputies of these officers attend, except in the Assize Court of Surry, at which the Attorney-General and Clerk of the Crown attend.

"The court," said the chief justice, "has the power in cases of aggravated misdemeanor, immediately affecting the administration of justice, or the peace and happiness of society, to make orders for the filing of criminal informations;" but this power (he adds) is seldom exercised. And the Attorney-General of this island has the same *ex officio* authority as the Attorney-General possesses in England.

The form of prosecution and the proceedings before trial, as respects the warrant, examinations, bail, commitment, &c. are the same as in England.

No fees are paid for preparing indictments for capital offences, or for offences which the Attorney-General prefers without the intervention of a private prosecutor.

A grand jury is impanelled at each of the sittings of the Supreme Court of Judicature and Assize Court. Its duties, &c. are the same as those of a grand jury in England.

The defendant's counsel is allowed to make a full defence for his client, by observations on the evidence.

Prisoners are never detained after acquittal for payment of fees, and none are payable to the law officers of the Crown.—1 Rep. 2d series, W. I. C. 51, 52.

*Civil Jurisdiction and Practice of the Supreme Court of Judicature and Courts of Assize.*

This court has jurisdiction, says the Attorney-General, of all civil actions of which the Court of Common Pleas in England has cognizance, whether real, mixed, or personal; but no writ of right or other real action, except that of partition and dower, is sustainable in this court.

Assurances by fine or recovery are not known in the colony; but there are conveyances of a certain description that have the same effect.

The action of ejectment is also the only one resorted to for the trial of title to lands.

The practice and rules of pleading are the same as in England, said the Attorney-General; dilatory and sham pleas are allowed, but he added that the latter are not frequently resorted to; and the chief justice remarked that a plea obviously dilatory would be set aside with costs.

Under the Island Act, 38 Geo. 3, c. 23, s. 3, the court, or a judge in vacation, may issue a commission *de bene esse* to take the examination of a witness about to leave the island, or unable to attend the trial through age, sickness, or infirmity.—1 Rep. 2d series, W. I. C. 52, 53.

The court also, under an authority which it has assumed, will issue a foreign commission where the witness is abroad, on a common motion, at the instance of plaintiff; but if applied for by defendant, an affidavit is required showing the materiality of the testimony, and that it cannot be supplied by any evidence in the island.

Debts by specialty or simple contract, where the cre-

ditor resides in England, are proved by affidavit under the city seal, under the British Act, 5 Geo. 2, c. 7.

To an inquiry from the commissioners respecting the jurisdiction of this court, without the intervention of a jury, the chief justice stated, that it possessed the same summary jurisdiction over its officers, and over all persons for contempt, which is exercised by the courts in England; and should an officer receive money under its process, and fraudulently withhold it, or neglect to receive it, or to enforce payment when he ought to have done so, the court will, without the intervention of a jury, fix him with the amount, and order him to pay it over to the party entitled to it.—1 Rep. W. I. C. 2d series, 54.

No writ of error can be brought on any order made by the court in the exercise of its summary jurisdiction.

In case, said the Attorney-General, the subject be aggrieved, and can sustain so expensive a proceeding, the only mode of obtaining redress would be by appeal to the King in Council.

The writ called the writ of execution is not an effective writ, but is required to be lodged, for the purpose of rendering the judgment a lien on the slaves of the defendant.

The writ of *venditioni* is the effective writ for levying on the goods and person of the defendant. It unites the form and efficacy of the writs of *fieri facias* and *capias ad satisfaciendum*. Thus, upon a judgment taken as of June Grand Court, a writ of execution is lodged, returnable the first day of the succeeding October court, and immediately after, the plaintiff may issue his writ *venditioni exponas*. In judgment of ejection the writ of possession does not issue till twenty days after the judgment has been obtained.—1 Rep. W. I. C. 2d series, 55.

In order to give a judgment a priority, it is necessary that an execution should be lodged. A subsequent judgment on which a writ of execution was lodged would have priority over a judgment previously obtained, if there had not been an execution lodged on that judgment.

If the nominal writ of execution be not lodged within a year, the judgment must be revived with *scire facias*, the proceedings on which are the same as in England.

Executions are taken out and suspended and used as securities.

A judgment is assignable, and after execution lodged becomes a security upon slaves.

An equity of redemption is not liable to be sold under an execution issued under a judgment at law.—1 Rep. W. I. C. 2d series, 56, 57.

*Revenue Jurisdiction of the Supreme Court.*

This court derives its authority as a Court of Exchequer under the act of the island, 33 Car. 2, c. 23, s. 1, before referred to, which established the Supreme Court.

A defendant may be arrested and held to bail in this court, in like manner as if he were sued by a private individual.

This court has jurisdiction as a Court of Escheat by virtue of the island act, 33 Car. 2, c. 22, s. 2. The jurisdiction of this court, in cases of escheat and forfeiture, is incident to its general authority as a Court of Revenue.

As a Court of Escheat it entertains jurisdiction in cases in which real (or personal estates, said the solicitor of the Crown,) or slaves, is or are claimed as belonging to the Crown, in consequence of the former proprietor having died without leaving heirs heritable, and in cases of lands forfeited for non-payment of quit-rents.

When property has become escheatable to the Crown any individual may petition the Governor for letters of preference.

If during the twelve months after office found there appears no claimant, judgment passes for the Crown.

The Governor grants the letters of preference to such of the illegitimate descendants as would have succeeded by descent, if legitimate, except where the proprietor has left an invalid testamentary disposition, in which case the letters of preference are granted to the person or persons whom the testator intended to take the property, and except also, where in the first case the descendant is unable to cultivate the property or to take care of the slaves, and in that event, letters of preference are granted to some friend or responsible person, upon the condition of paying the descendant a certain proportion of the appraised value. "In short," says the Attorney-General, "in granting letters of preference on escheated property, every care is taken that the illegitimate descendants of the intestate shall derive the full benefit of the escheated property, or of its value."

To the question, whether the Crown can attach debts

or other dues owing to its accountants in the hands of third persons in this colony? the chief justice replied, "I am aware of no proceeding by which this can be done. The foreign attachment law of the island does not seem to contemplate the case of the Crown;" but to the same question the Attorney-General stated, that "by means of the island foreign attachment law, 33 Car. 2, c. 23, s. 8, the Crown, like any individual, may attach debts owing to its debtors in the hands of third persons in the colony; but the English process of extent in aid is not in force."—1 Rep. W. I. C. 2d. series, 57, 59.

#### *Court of Error.*

This court is established by His Majesty's instructions to the Governor. It is composed of the Governor or person administering the government, and the members of the council, who decide by a majority.

No person who sat as a member of the court below when the judgment appealed from was pronounced, can sit as a member of this court; but the chief justice, if he composed a part of the court pronouncing the judgment, may, if he thinks proper, attend the court, and give the reasons for the decision of the court below, but he cannot vote.

Writs of error or appeals lie from the Supreme and Assize Courts, in cases where the matter in dispute exceeds £300 sterling in value, except in the case of a judgment in ejectment, or where any tax, duty, or other right of the Crown is involved, when the value need not be stated. The plaintiff in error enters into a bond for £500 to prosecute, to obey the decision, and to pay such costs as shall be awarded against him.—See His Majesty's 47th and 48th Instructions to the Governor of Jamaica, 1 Rep. W. I. C. 2d series, 60.

#### *Court of Chancery.*

The Governor, by virtue of the letters-patent appointing him Governor, exercises the office of chancellor, and the equity jurisdiction of this court is similar to and co-extensive with that of the Court of Chancery in England; but this court has no jurisdiction in addition to its general equity

jurisdiction, except in cases subjected to it by private acts of the legislature.

There is also a common law or petty bag side of the office.

The chancellor's jurisdiction, in cases of idiotcy and lunacy, is derived from an express grant in the letters-patent appointing him Governor.

This court has also jurisdiction in matters of dower and partition, and to stay waste by injunction.

It also appoints guardians to infants. Those above sixteen name their own guardians, those under that age, or absent from the island, have, on petition, verified by affidavit and signed by counsel, a guardian appointed, who gives bond to account, with surety, before a master.

It has also jurisdiction to decree the sale of lands for payment of judgment debts, on a suit by a judgment creditor; but this proceeding is seldom resorted to, and only in the cases of incumbered real estates, as the Insolvent Debtors' Act and Extent Law of the island are, according to the registrar, calculated to meet most cases, both during the life and after the death of the debtor.

The writ of *ne exeat insula* issues from the Court of Chancery in Jamaica, under the same circumstances as the writ of *ne exeat regno* does in England, and is indorsed to the provost marshal to take bail, and the amount marked thereon.

The proceedings and practice in the equity side of the court are as analogous to those of the Court of Chancery in England as local circumstances will permit.

Every bill of injunction must have annexed to it an affidavit verifying the matters of fact therein stated.

Bills are entertained on behalf of married women for a separate maintenance, and from the like necessity that existed during the Commonwealth in England—the want of an Ecclesiastical Court to decree alimony.

The appointment of receivers to estates is much more frequent in Jamaica than in England, and forms a very important part of the jurisdiction of the court, and the appointment is solely and strictly with the chancellor, without any reference to the master. The appointment is made on petition, verified by affidavit, and all parties interested are at liberty to propose a fit person.

The receiver enters into a recognizance, with a surety,



before a master, to the amount of the estimated value of two, and sometimes three crops, or other annual produce of the property, notice of which, with the name of the surety, is served on the other party six days before; (9) and this security is enforced by *scire facias* in the Supreme Court. They account annually before the master, except when the account of sales is to be produced from England, when some further time is necessary.—1 Rep. W. I. C. 2d series, 61, 63.

They are entitled to six per cent. on the gross proceeds, which forms an item to their credit in the accounts.

By the answers to the question, Whether the Court of Chancery in England ever appoints receivers, or makes any orders or decrees respecting real property in this colony? it appears that such orders are not frequent; but they would, as stated by the Attorney-general, be enforced in every respect by the Court of Chancery at Jamaica.

The mode of marshalling the assets under a decree to account is the same as in England.—1 Rep. W. I. C. 2d series, 64.

It seems that tacking (or the practice of permitting the holder of a third mortgage to take precedence of the second by redeeming the first mortgage and annexing his security to the third mortgage,) is not allowed at Jamaica, because such a doctrine would interfere with the priority acquired by the time of recording mortgages or obtaining judgments where slaves are concerned.

The costs in this court are taxed by the registrar as between party and party, and frequently as between solicitor and client, on application to the court.

The masters in ordinary of this court are at present three in number. They are appointed by the chancellor and removable by him, and he is not limited as to the number. They reside at the seat of government in Spanish-Town. There are also some few individuals residing in the country who have master's commissions, and to whom occasionally references are made, and who, with the masters extraordinary, administer oaths and take recognizances.

The registrar is not aware of any qualification being

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(9) This is enjoined to be done by the master by the act 4 Geo. 4, c. 21, under a penalty of £500.

necessary beyond the reputation of being a good accountant.—1 Rep. W. I. C. 2d series, 65, 66.

*Court of Ordinary.*

This court derives its authority from the King's commission to the Governor, who (or the person administering the government) is, by virtue thereof, Ordinary and sole judge.

The subject-matters of the court's jurisdiction are the probate of wills and granting letters of administration, and the ordinary also decides in all cases of contested administration and as to the validity of wills.

All wills affecting real and personal property in this island are proved in this court, in common or in solemn form.

When a will is proved in a solemn form, articles are exhibited by the promovent; an answer is filed; and when the cause is at issue, interrogatories are exhibited and witnesses examined.

Probate of the will as to personalty is conclusive, and in a case referred to by the Attorney-General was held so even as to real property.

The following mode of proving wills uncontested was given by the Colonial Secretary, who is clerk of the court:—A dedimus is granted by the Governor to certain persons to take the examination of witnesses attesting the execution of the will. A dedimus also at the same time issues to qualify the executors named in the will, and another dedimus issues to qualify certain persons as appraisers to the estate, accompanied by a warrant to such persons to act as such appraisers. A bond is also signed by the qualified executor, with proper securities, duly to administer according to law. When those several forms have been complied with, letters testamentary are granted to the executor, as his authority for acting.

Original wills, after they have been proved and recorded in the secretary's office, are carefully preserved there and never again permitted to be taken out, except by order of the Governor, but the instances are very rare.

The Governor sits alone in this court, without any assessor or other person to assist his judgment.

This court has no jurisdiction to pronounce a sentence of divorce, or to decree alimony.

It has no power of enforcing obedience to its sentences.

It has no authority to excommunicate, nor is it armed with any other process to punish contempt or carry its orders into execution. For this reason no costs are given in this court.

Neither the probate of a will nor the grant of letters of administration authorizes the executor or administrator to enter on or possess himself of the real estate of the deceased.

“Very frequently, however,” added the Attorney-General, “the executors and administrators possess themselves of such real estate when the heir is absent from the island and unrepresented.”

A record is kept of the proceedings of the court in the secretary's office. The secretary of the island is clerk of the court.—1 Rep. W. I. C. 2d series, 69, 70.

#### *Court of Vice-Admiralty.*

This court derives its authority from letters-patent under the great seal of the Admiralty.

The present judge holds his appointment by virtue of a commission under the hand and seal of the Governor.

There is only one judge, who is designated Judge and Commissary of the court. He is appointed during His Majesty's pleasure, and liable to be removed at his command. The only remuneration which the present judge receives consists of fees upon civil proceedings in this court; those fees in 1824 amounted to £146. 14s. currency, or £104. 15s. 8d. sterling.

The judge practises at the bar in the Courts of Chancery and Common Law.

The officers of this court, besides the judge (who has three surrogates for the examination of witnesses) and the advocate-general, are the registrar and marshal. The two latter are appointed by patent under the seal of the Admiralty, or by the Governor, when there is no Admiralty appointment.—1 Rep. W. I. C. 2d series, 70, 71.

#### *Court of Admiralty Sessions.*

The court derives its jurisdiction from an act of the Colonial Legislature, 33 Car. 2, c. 8, s. 2. The Governor is authorized by that act to issue a commission directed to a judge of the Admiralty and other substantial

persons, who are invested with the same power for the trial and punishment of treasons, murders, piracies, and other offences committed on the seas, as commissioners appointed in England under the statute 28 Hen. 8, c. 15, "for pirates." This is the Admiralty jurisdiction ordinarily resorted to.

There exists, however, another of modern institution, under the Act of Parliament 46 Geo. 3, c. 54.

A commission under the great seal of Great Britain may be directed to such four or more discreet persons as the Lord Chancellor of Great Britain may think fit to appoint. These commissioners have also the same powers, and over the same offences committed upon the sea, as commissioners appointed under the 28th Hen. 8, c. 15, have for trial in England.

The commission issued by the Governor under the authority of the Colonial Act, has always been directed to the judge of the Court of Vice-Admiralty (as the President), the Commander-in-Chief of the squadron, the members of His Majesty's Council, the Chief Justice and Assistant Judges of the Supreme Court, the Captain of the Navy on the station, the Judges of Assize, Barristers at Law, the Secretary of the Island, the Receiver-General, the Naval Officers, and the Collectors and Comptrollers of His Majesty's Customs at the different ports.

Of this number, three constitute a court, of whom the Judge of the Vice-Admiralty is required to be one. His assistants are generally two of the Assistant Judges, or Judges of Assize.

Letters-patent of His late Majesty George 3, bearing date February 1st, 1815, were transmitted to Jamaica, under the statute 46 Geo. 3, c. 54, directed to the Governor, the Lieutenant-Governor, the Judge of the Court of Vice-Admiralty, the Chief Justice, the Senior Member of the Council, the Commander-in-Chief of the naval forces, and all admirals, captains, or commanders of ships within the jurisdiction.

Offences are tried before either jurisdiction according to the course of the common law, and with the assistance of a grand and petty jury.

A prisoner has the benefit of a challenge to the same extent as upon a trial for an offence committed upon land.

The sentences passed by the commissioners can only be averted by the exercise of the prerogative of pardon,

which resides with the Governor, except in treason and murder, when the Governor can only reprieve until the pleasure of His Majesty is signified.

The officers of the Court of Admiralty Sessions are the clerk of arraigns and the marshal.

The appointment of the latter is permanent; the former is nominated by the judge of the Court of Vice-Admiralty upon a commission being issued.—1 Rep. W. I. C. 2d series, 74, 75.

### *Custodes and Justices of the Peace.*

The custos is appointed by commission under the hand and seal of the Governor, or person exercising the functions of Governor. His duties are similar to those of the custos rotulorum of a county in England. His jurisdiction does not extend beyond the parish for which he is appointed. He holds his office during the Governor's pleasure.

He has the appointment of the clerk of the peace.

Justices of the peace are also appointed by the Governor, by whom they are removable at pleasure. Their duties are those which belong to that office in England, with certain additional duties in relation to the slave population. Their jurisdiction is limited to the parishes for which they are respectively appointed.

There is no qualification of property requisite to their appointment, but they are generally freeholders.

The custos generally recommends a person to the office of justice, but such recommendation is not essential to the appointment.

The justices of the peace have a judicial criminal jurisdiction, under certain acts of the legislature, regulating the police of their parishes, exclusive of their jurisdiction when sitting as members of the Quarter Sessions and Slave Court.

Two justices of the peace, under the act 55 Geo. 3, c. 19, can hear and decide in a summary way matters in dispute between masters and servants, to an amount not exceeding £100. Two justices may also decide in a similar way civil cases between party and party to the amount of forty shillings.

The proceedings in these cases are not removable into another court.—1 Rep. W. I. C. 2d series, 75, 76.

*Court of Quarter Sessions.*

The court is composed of three or more magistrates; three, however, are required to form a court.

The custos, or in his absence the senior magistrate, sits as chairman.

The jurisdiction of the Court of Quarter Sessions, as a court of criminal judicature, is co-extensive with that exercised by the Court of Quarter Sessions in England, and the court is assisted by a grand and petit jury.

The indictments are prepared by the clerk of the peace, and prosecutions are conducted by him.

Counsel occasionally attend, attorneys at law frequently; but in most instances the parties act for themselves.

This court has a concurrent jurisdiction with the Supreme and Assize Courts in those criminal cases which do not extend to life, or in which an exclusive jurisdiction is not given to the latter courts.

The punishments which can be inflicted by this court are fine, imprisonment, and whipping; and its sentences are carried into execution by the provost marshal or his deputy.—1 Rep. W. I. C. 2d series, 77.

*Insolvents.*

There are no bankrupt laws in this colony, but there is an Island Act for the relief of insolvent debtors, the 4th Geo. 4, c. 11, under which an insolvent debtor may obtain his discharge by a surrender of all his effects, and there is no distinction between the cases of trader and non-trader.—1 Rep. W. I. C. 2d series, 87.

*Attorney-General.*

This officer is appointed by letters-patent from His Majesty, and removable by him alone. He may be suspended by the Governor with the advice of the council until His Majesty's pleasure be known.

He is usually appointed a member of His Majesty's Council, but is not necessarily so.

With respect to all criminal prosecutions, the office is

co-extensive with that of Lord Advocate of Scotland. All indictments are preferred by him in civil and revenue cases; he appears for His Majesty when the Crown is interested. He is sworn as magistrate for the body of the island. He practises as a barrister.

The amount of his salary and fees, as Attorney-General, does not exceed £700 per annum, and he is not allowed any clerk or office.

He attends all the courts at which counsel attend, except the Cornwall Assize Court, owing to its distance from the seat of government. He appoints a barrister to act for him there.

He possesses and exercises the same power as the Attorney-General of England in entering a *nolle prosequi*, for which he does not receive any fee or perquisite.—1 Rep. W. I. C. 2d series, 88.

#### *Colonial Secretary.*

The secretary of the island was appointed by His Majesty's letters-patent.

He has leased his office to the present acting secretary, who gives large security to the patentee for payment of the rent, which is £3000 sterling, and the due discharge of his duty, as well as security to the colony; the patentee does not give security to the island.

The colonial secretary being also clerk of the council receives two salaries, one of £270, and another of £420. The remainder of his emoluments are established by the act 56 Geo. 3, c. 19.

His duty is to record all papers sent to his office for that purpose, also all laws of the island, copies of which he sends to the Secretary of State for the Colonies and Clerk of the Council.

The acting secretary estimates his emoluments at an average of £846 per annum.—1 Rep. W. I. C. 2d series, 89.

#### *Provost Marshal.*

This officer is appointed by patent from the Crown, and is removable by His Majesty's representative in case of malversation.

He is the executive officer of the laws and keeper of all the prisons in the island. His duties are analogous to those of sheriff in England; and in addition to those duties he discharges those of sequestrator in Chancery, usher of the black rod, and water baliff.—1 Rep. 2d series, 89, 90.

#### *Coroners.*

There is a coroner in each parish of this island, elected by the freeholders thereof, and in the parish of Port Royal there are two; they would be removable by writ as in England. By the act 11 Geo. 3, c. 3, s. 1, the laws and statutes of England concerning coroners are declared *to be in force in the colony; their fees are regulated by that act, and increased by 41 Geo. 3, c. 13.*

There is no salary attached to the office, but the coroner is entitled to a fee of £5 on each inquisition, together with 2s. 6d. for every mile he has to travel in taking the same.—1 Rep. 2d series, W. I. C. 91, 92.

#### *Appeals to the King in Council.*

An appeal lies immediately to the King in Council from the Courts of Chancery and Ordinary, and ultimately from the Court of Error.

No appeal lies from the Court of Error when the amount in dispute is less than £500 sterling (costs not included.)

Interlocutory orders made in equity are appealable, but not those which are made at law, said the Attorney-General. The Registrar of the Court of Chancery stated that appeals from the Court of Chancery are common from all orders, excepting those for costs alone, and for contempt of process. Such part of an order appointing a receiver, as relates to change of possession merely, is not suspended by an appeal; in every other case the proceedings are stayed *ipso facto*.

“The chancellor,” he says, “has no doubt the power of refusing to grant an appeal, and within his recollection it was exercised by General Morrison; on that occasion he searched for precedents, and found seven.” The doctrine laid down here by the registrar is too unqualified; for (say the commissioners) “we conceive that where the sum



in question amounts to £500 sterling, the office of the Governor, in granting the appeal, and issuing the order to the court below for the papers, and fixing the security, is merely ministerial; in fact, on an application to the Lords in Council in the case of *Ross v. Moliere*, in the year 1822, they made an order on the Lieutenant-Governor of Demerara to grant an appeal which he had refused in this case, and to send home the papers. The present chancellor (the registrar observed) has on several occasions publicly expressed himself favourable to appeals, and he has shown such disposition by never refusing one; and the observation of the Attorney-General was, that when a question has arisen on the King's instructions respecting appeals, the leaning of the court has ever been in favour of the right of appeal."

The appeal from the Court of Chancery to the King in Council is written at the foot of the draft order when submitted to the solicitor for perusal, and before the same is entered in the registrar's office. The appellant, with a surety, enters into a bond of £500 to prosecute the appeal and answer the costs that may be awarded against him. Such security ought to be given in strictness, said the registrar, within twenty-eight days from the order being entered, or the appeal may be dismissed; but twenty-eight days further may be obtained, if required, on common petition. After such security is given, the appeal cannot be dismissed in this colony at the instance of the respondent, otherwise than with consent.

With respect to appeals from the Court of Error, on judgments at law, the appellant must note his appeal within fourteen days, and enter into similar security; from the unwillingness, however, of the courts to interpose any obstacle to an appeal, there is great laxity in the practice as to the time of appealing.

Personal security is allowed in cases of appeal, and unincumbered real property is not required.—1 Rep. W. I. C. 2d series, 92.

## NORTH AMERICAN COLONIES.

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### THE BAHAMAS.

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THE first in the list of those colonies, which are usually denominated the North American Colonies, are the Bahamas, or Lucayan Islands. The chain of islands which bears this name is of vast extent. The islands lie from latitude  $21^{\circ} 30'$  to  $27^{\circ} 30'$ , and from  $74^{\circ}$  to  $80^{\circ}$  west longitude. They are composed of innumerable rocky islets, called keys and islands, of which not more than 12 or 14 are inhabited. The settled islands are stated to be New Providence, (in which Nassau, the capital, is situated,) Turks' Island, Eleuthera, Exama and its keys, Harbour Island and keys, Crooked Island, Long Island, St. Salvador, (the first place discovered by Columbus, and so named because it was discovered within the three days, at the end of which he had been compelled by his mutinous crews to promise to return to Spain, if before the expiration of that time they did not see land,) the Caicos, Watling's Island, Rum Key and Henegua. Some of the largest of the Bahamas, such as the Great Bahama and Lucaya, are still uninhabited. On their first discovery the Spaniards carried off or destroyed the inhabitants, and until about 1629, the whole of the islands are said to have remained unpeopled. They rise, it is said, almost perpendicularly from an immense depth of water, and seem to have been formed from an accumulation of shells and sand. At the utmost depth to which the inhabitants have penetrated, nothing has been found but calcareous rock, and an intermixture of shells.(1) The calcareous

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(1) 4 B. Edwards, 224, citing M'Kinnen.

rock is covered by a light soil, frequently but of small depth. The climate is healthy. There are no rivers and streams, but water is easily obtained by digging wells. Cotton, salt, mahogany, dying woods, turtle, and fruit, are the exportable commodities of these islands.

#### HISTORY AND CONSTITUTION.

New Providence was settled in 1629 by the English, but they were expelled in 1641 by the Spaniards, who, though they did not settle there, seemed determined that no one else should do so. The colony was resettled by the English in 1666, but they were again expelled by a combined French and Spanish fleet in 1703. New Providence then became the resort of pirates, whose depredations at length compelled the government to interfere in 1718, and they determined to resettle the colony. The pirates were suppressed by a force under the command of Captain Woodes Rogers. Settlements again began to be made, and in 1740 the town and harbour of Nassau were fortified. The islands were attacked in 1776 by Commodore Hopkins, with a squadron from Philadelphia, and capitulated in 1781 to a Spanish force under Don Galvez. By the treaty of 1783 they were restored to the British crown, but while that treaty was under consideration in Europe, the islands themselves were recaptured in a most gallant and romantic manner by Colonel Deveaux, an American royalist. At the close of the contest, in which England had been then engaged, many of the royalist party among the Americans settled in New Providence. In 1787 Nassau was declared a free port, and in 1792 the privilege before granted was made perpetual. It has ever since been numbered among the free ports of the colonies in the acts relating to colonial trade.(2)

The Council, which is appointed by the Crown, consists of twelve members.

The House of Assembly is composed of members returned by the different islands. Their number is between twenty and thirty.(3) The possession of 200 acres

(2) See the last act on this subject, 3 & 4 W. 4, c.59.

(3) 4 B. Edwards, 227.

of cultivated land, or of property to the value of £2000 currency, is the qualification required in a candidate. The electors are all free white persons, who have resided twelve months within the government, for six of which they must have been householders or freeholders, or in default of that, must have paid duties to the amount of £50.

#### ACTS OF THE LEGISLATURE.

These, at the period of the commissioners' visit to the colony, were comprised in four printed volumes, and in four parts of a fifth volume, extending to the date of December, 1824. See the third Report W. I. C. second series, 21.

4 Geo. 3, c. 1, An Act "for the public registering and recording all deeds or conveyances that are or shall be made of any lands, tenements, or hereditaments, negros, vessels, goods, or effects, within the Bahama Islands;" subsequently amended by 46 Geo. 3, c. 16, and by the 2 Geo. 4, c. 36.

The twelfth and last clause of the 46 Geo. 3, c. 16, declares, that deeds or conveyances first recorded shall have priority of other deeds or conveyances of the same lands, &c., although of prior date.

40 Geo. 3, c. 2, An Act "to declare how much the laws of England are practicable within the Bahama Islands, and ought to be in force within the same."

This is what is termed the Declaratory Act of the Bahama Islands, and does not admit of abridgment. It gives a full and clear account of what part of the law of the mother country shall be deemed to be of force and binding in the colony, instead of leaving it to the varying discretion of the judges from time to time, as is the case in many of the other colonies.

The preamble of the act is curious. It declares, that "whereas the common law of England is the best birth-right of Englishmen and of their descendants, but nevertheless is not in all respects applicable to the circumstances and condition of new and distant colonies; and whereas doubts have arisen how far the acts of parliament in which the colonies and plantations are not expressly mentioned or included under general words, do extend to these colonies and plantations; by reason whereof your Majesty's liege subjects of these islands

have sometimes been in danger of being deprived of the benefit of many good and wholesome laws; and whereas it is expedient that all doubt be taken away concerning a subject of such high importance; be it therefore declared, that the common law of England in all cases, where the same hath not been altered by any of the acts or statutes hereinafter enumerated, or by any act or acts of the Assembly of these islands, (except so much thereof as hath relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law or of batail, appeals of felony, writs of attain, and ecclesiastical matters,) is, and of right ought to be, in full force within these islands, as the same now is in that part of Great Britain called England." By sect. 2 it is enacted, that "the several statutes and acts of Parliament hereinafter particularly enumerated and mentioned, are, and of right ought to be, in full force and virtue within and throughout this colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid acts and statutes had been made and enacted by the General Assembly of these Islands."

9 Hen. 3. c. 8	1 Edw. 3. stat. 2. c. 16	2 Hen. 4. c. 11
_____ 18	4 Edw. 3. c. 2	4 Hen. 4. c. 18
20 Hen. 3. c. 1	_____ 7	_____ 23
_____ 2	_____ 10	5 Hen. 4. c. 5
_____ 9	5 Edw. 3. c. 10	_____ 10
3 Edw. 1. c. 4	_____ 14	11 Hen. 4. c. 3
_____ 9	14 Edw. 3. stat. 1. c. 6	13 Hen. 4. c. 7
_____ 15	18 Edw. 3. stat. 2. c. 2	2 Hen. 5. c. 2
_____ 25	20 Edw. 3. c. 3.	9 Hen. 5. stat. 1. c. 4
_____ 26	25 Edw. 3. stat. 5. c. 2	4 Hen. 6. c. 1
_____ 28	_____ 3	8 Hen. 6. c. 9
_____ 29	_____ 5	_____ 12
_____ 30	_____ 14	_____ 15
_____ 33	28 Edw. 3. c. 3	_____ 29
6 Edw. 1. c. 1.	34 Edw. 3. c. 8	11 Hen. 6. c. 3
13 Edw. 1. stat. 1. c. 1	_____ 12	_____ 6
_____ 4	38 Edw. 3. stat. 1. c. 8	1 Rich. 3. c. 3
_____ 7	_____ 12	3 Hen. 7. c. 2
_____ 15	50 Edw. 3. c. 6	_____ 2
_____ 22	1 Rich. 2. c. 12	_____ 4
_____ 23	5 Rich. 2. c. 8	_____ 10
_____ 31	8 Rich. 2. c. 4	4 Hen. 7. c. 12
_____ 34	9 Rich. 2. c. 5.	_____ 13
_____ 40	13 Rich. 2. stat. 1. c. 5	_____ 20
_____ 45	_____ stat. 2. c. 1	_____ 24
_____ 49	15 Rich. 2. c. 2	11 Hen. 7. c. 12
28 Edw. 1. c. 11	_____ 3	_____ 20
Stat. de fragentibus prisonam.	17 Rich. 2. c. 6	21 Hen. 8. c. 7
1 Edw. 2	_____ 8	23 Hen. 8. c. 1
	1 Hen. 4. c. 10	_____ 5

24 Hen. 8. c. 5	31 Eliz. c. 5	8 & 9 W. 3. c. 31
25 Hen. 8. c. 3	39 Eliz. c. 9	9 & 10 Wm. 3. c. 15
_____ 16	_____ 15	_____ 17
27 Hen. 8. c. 4	43 Eliz. c. 8	10 & 11 Wm. 3. c. 16
_____ 10	2 James 1. c. 8	_____ 23
28 Hen. 8. c. 1	_____ 11	1 Ann. stat 2. c. 6
_____ 15	4 James 1. c. 3	1 Ann. c. 9
31 Hen. 8. c. 1	7 James 1. c. 5	3 & 4 Ann. c. 9
32 Hen. 8. c. 2	_____ 12	4 Ann. c. 16
_____ 9	21 James 1. c. 4	5 Ann. c. 6
_____ 28	_____ 6	_____ 9
_____ 30	_____ 13	6 Ann. c. 18
_____ 32	_____ 14	8 Ann. c. 14
_____ 33	_____ 15	9 Ann. c. 14
_____ 36	_____ 16	12 Ann. stat. 1. c. 7
_____ 37	_____ 24	_____ 2. c. 18
_____ 38	_____ 27	4 Geo. 1. c. 11
33 Hen. 8. c. 1	13 Car. 2. stat. 2. c. 2	_____ 12
34 & 35 Hen. 8. c. 5	16 Car. 2. c. 7	5 Geo. 1. c. 13
37 Hen. 8. c. 6	16 & 17 Car. 2. c. 8	2 Geo. 2. c. 2
1 Edw. 6. c. 7	17 Car. 2. c. 7	_____ 25
2 & 3 Edw. 6. c. 24	_____ 8	4 Geo. 2. c. 10
5 & 6 Edw. 6. c. 9	19 Car. 2. c. 6	_____ 28
	22 & 23 Car. 2. c. 1	5 Geo. 2. c. 25
1 Mary, stat. 2 c. 7	_____ 7	7 Geo. 2. c. 15
1 & 2 Phil. & M. c. 13	_____ 10	_____ 20
2 & 3 Phil. & M. c. 10	29 Car. 2. c. 3	_____ 22
4 & 5 Phil. & M. c. 4	_____ 5	11 Geo. 2. c. 19
5 Eliz. c. 9	_____ 7	14 Geo. 2. c. 17
_____ 14	30 Car. 2. c. 7	15 Geo. 2. c. 30
8 Eliz. c. 2	31 Car. 2. c. 2	19 Geo. 2. c. 21
_____ 4	3 Wm. & M. c. 9	20 Geo. 2. c. 19
13 Eliz. c. 5	_____ 14	_____ 30
_____ 6	4 Wm. & M. c. 4	23 Geo. 2. c. 11
18 Eliz. c. 5	4 & 5 Wm. & M. c. 16	24 Geo. 2. c. 44
_____ 7	_____ 20	_____ 45
_____ 14	_____ 21	26 Geo. 2. c. 19
27 Eliz. c. 4	7 Wm. 3. c. 3	27 Geo. 2. c. 3
_____ 5	7 & 8 Wm. 3. c. 34	_____ 20
31 Eliz. c. 2	8 & 9 Wm. 3. c. 11	

By section 3 it is declared, that "all and every the acts, statutes, and parts of acts and statutes of the Parliament of England or Great Britain, which relate to the prerogative of the crown, or to the allegiance of the people, also such as require certain oaths (commonly called the state oaths) and tests to be taken or subscribed by the people of Great Britain, also such as declare the rights, liberties, and privileges of the subject are, and of right ought to be, of full force and virtue within this colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid acts and statutes had been made and enacted by the General Assembly of

these Islands." (See appendix to 3d Rep. W. I. C. 2d series, and Howard's Laws of Colonies.)

45 Geo. 3, c. 14. An Act "for making provision for printing the laws of the Bahama Islands and for other purposes."

6 Geo. 4, c. 12. An Act "to authorise the bishop of Jamaica to exercise ecclesiastical jurisdiction within the Bahama Islands."

By this act, after reciting that His Majesty had been pleased to constitute bishoprics in the islands and colonies in the West Indies, and to erect the island of Jamaica into a bishop's see, and that it was expedient to authorise the bishop to exercise his ecclesiastical jurisdiction over the clergy, it is declared, that all laws, ordinances, and canons ecclesiastical, which are now used and in force in England, so far as the same relate to jurisdiction over the clergy therein, and all rules of proceeding for carrying the same into effect, shall be held to be in full force within these islands, and that the judges of the General Court shall enforce the execution thereof in the same manner as the Courts of Common Law in England are authorised to do: it is provided, however, that nothing in this act contained shall be construed to affect the rights of the governor or commander in chief, as ordinary of these Islands (1). (3d Rep. W. I. C. 2d series, 55.)

#### COURTS IN GENERAL AND THE LAW AND PRACTICE THEREIN.

The following are the courts established in this settlement for the administration of criminal and civil justice respectively, viz., the Court of Chancery, the Court of Error or of Appeal, the General Court (exercising both a criminal and a civil jurisdiction,) the Court of Ordinary, the Court of Vice-Admiralty, the Court of Admiralty sessions, the Inferior Court for the Island of New Providence, and the Inferior Court for the Turk's Islands.

The system of laws which prevail in this colony, is described to be founded upon the acts of its local legislature, upon certain statutes and acts of Parliament declared by a law of the colony to be in force therein, and by the common law of England, "when the same hath not

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(1) See ante, p. 32, n. 5.

been altered by any of the said statutes or acts of Parliament, or by any act of the Assembly of these islands."

Where a question arises, whether or not a certain English act of Parliament be in force in the colony, the decision of course rests with the judges of the court before whom the point is raised; but the following was laid down to the Commissioners as the general principle by which such a question would be determined; premising that by His Majesty's commission the Governor of the settlement is appointed Captain General and Governor in Chief in and over "our Bahama Islands in America."

"The law of England extends to the colony, if the Bahama Islands *eo nomine* be included, as in the 28 Geo. 3, c. 6, and in some of the revenue and in the free port acts; or if the words of the law are so general as necessarily to include them, as for example, the statute 8 Geo. 1, c. 24, for the more effectual suppression of piracy, which extends by the very words of it to Asia, Africa, and America, and the late acts of Parliament for abolishing the slave trade, and for making the same felony and piracy."

"The act also of 19 Geo. 2, c. 30, for the better encouragement of His Majesty's Sugar Colonies in America, (which prevents seamen in the merchant service from being impressed,) has been held on many occasions, by the general court of this colony, to be in force therein."

The acts of the legislature of this colony are in the first instance, as in the other colonies, prepared by the members themselves, who bring them forward, and not by one or more individuals of legal knowledge appointed for the purpose, and are promulgated by printing. The commissioners recommend the latter as the preferable course.

They are deemed to be in force from the time they have been assented to by the Governor, unless, of course, they contain, as in some they must, a suspending clause, and they are taken notice of by the courts judicially and *ex officio*.

The *Habeas Corpus* Act, 31 Car. 2, c. 2, is in force here under the Colonial Declaratory Act before mentioned.

The writ issues, *ex debito justitia*, out of the general court, and would also (although an instance had not been known) be issued out of the Court of Chancery.

The act 5 Geo. 2, c. 7, "for the more easy recovery of debts in the plantations," was adopted by the Colonial



Act, 45 Geo. 3, c. 5, and the statute of frauds (29 Car. 2, c. 3,) is in force here, and also the following acts fixing the limitation of time for criminal prosecutions and civil suits, *viz.* the stat. 21 James 1, c. 16, "for limitation of actions and for avoiding of suits;" the stat. 24 Geo. 2, c. 44, as to actions against justices of the peace; the 31 Eliz. c. 5, concerning informers; and the 7th Wm. 3, c. 3, "for regulating trials in cases of treason and misprision of treason." There is also a Colonial Act of Assembly (44 Geo. 3, c. 1,) limiting the time within which certain lands therein specified must be put in suit.

#### *Counsel and Attornies.*

The admission of counsel, attornies, solicitors, and proctors, to practise in the courts of this colony, is regulated by a local act, 39 Geo 3, c. 2, which provides,—cl. 1, That no person shall act as a counsel, attorney, solicitor, or proctor in any court in this colony, unless he shall have been called to the bar in Great Britain or Ireland, or admitted an attorney in the Court of King's Bench or Common Pleas in England or Ireland, or shall have served for five years as clerk to a counsel and attorney of the General Court of these islands. And by cl. 2, the fitness of the last class of persons may be examined into by the judges of the General Court.

#### *Practice of the Courts.*

There is no local regulation prohibiting a party from being heard in person in any of the courts here.

No obstacles are opposed to persons applying to sue *in formá pauperis*, provided they make the usual petition and affidavit.—3 Rep. W. I. C. 2d series, 57, 58.

#### *The General Court.*

This court was established by an act of the local legislature, passed in 45 Geo. 3, and is empowered to exercise three distinct heads or classes of jurisdiction, *viz.* a civil, criminal, and revenue jurisdiction, but the latter, it appears, the court has never exercised as distinct from its ordinary civil jurisdiction.

There are three judges of this court, who all sit, whatever may be the class of jurisdiction the court is then exercising, *viz.* a chief and two assistant justices, who are appointed by the Crown during pleasure, and it appears that since the year 1797 the qualification that a person aspiring to the office of chief justice should be a barrister, or a person who has gone through a previous course of legal study, has been required; but this rule, it is stated, has not always been observed with regard to the assistant judges.

The emoluments of the office of chief justice arise from a home salary of £500 sterling, a colonial salary of £500 currency (which is rather more than £290 sterling), and certain fees which are fixed by the docket. These latter amounted on an average of the five years preceding the commission, to £338. 4s. 6d. currency, (or £197. 5s. 11d. sterling.)

The assistant judges are allowed each a home salary of £200 sterling, and a colonial salary of £300 currency (or £204. 3s. 4d. sterling), but no other emoluments, except in the absence of the chief justice, when the senior assistant justice is entitled to receive the fees of the chief.—3 Rep. W. I. C. 2d series, 58.

#### *Criminal Jurisdiction of the General Court.*

This court sits at the court-house in Nassau, (the seat of government,) during three terms in each year, commencing respectively on the third Tuesday in January, April, and July. It exercises the same jurisdiction as the Court of King's Bench in England, and is a Court of Oyer and Terminer and General Gaol Delivery.

The proceedings of the court are, in all material points (such as being grounded on previous examinations before a magistrate on oath, the signing them by the party, and their being bound over to prosecute, and the like,) together with the form of indictment, pleading, &c. the same as in England.

Only one instance was known of the court having ordered a criminal information to be filed, which was in the case of a gross misdemeanor; but the powers of the Attorney-General to file such informations *ex officio*, were conceived to be similar to those of the Attorney-General in England.

The selection, impannelling, and securing the attendance of grand jurors and the right of challenge, &c. are provided for by a local act (46 Geo. 3, c. 4.) The foreman of the grand jury is appointed by the court; the petit jury chooses its own foreman. The grand jury is charged by the chief justice or presiding judge before entering upon the discharge of its duty.

Counsel are allowed upon the trial to address the jury on behalf of the prisoner in all cases, and the commissioners were informed that no inconvenience had ever been found to result from such a practice.

The chief justice or presiding judge sums up the evidence, and states to the jury the law of the case; the other judges occasionally assist the chief in taking notes.

The Attorney-General has frequently, it is said, exercised the power of entering a *nolle prosequi*, both in capital cases and in prosecutions for minor offences.

The officers of the court are the provost marshal, the clerk of the crown, and the crier of the court; the first is appointed by the Crown, the second by the Governor, and the crier by the chief justice. They all hold their offices during pleasure.—3 Rep. W. I. C. 2d series, 59, 60.

#### *Civil Jurisdiction of the General Court.*

The General Court sits as a court of civil jurisdiction at the court-house in the town of Nassau, during three terms in each year, commencing on the third Tuesday in January, April, and July, and has jurisdiction in all actions of which the Court of Common Pleas in England has cognizance;—“but real actions, except writs of dower, are never prosecuted.”

The rules and practice by which this court is guided were framed in the year 1797, by the then chief and assistant judges, and do not differ in any material respect from those established in the Court of Common Pleas, on similar points, in England. The pleadings are also framed, as nearly as may be, according to the forms used in the English courts.

The dower of a married woman may be barred by private examination before a judge, and by a law of this colony now in force (51 Geo. 3, c. 15,) husband and wife may by deed convey the estate of the wife, or of the hus-

band and wife jointly, situate in the colony, without fine or recovery.

The action of ejectment is the usual action resorted to for the trial of titles to land, and may be barred by twenty years' adverse possession.

Personal actions are commenced by writ of *capias*, served by the provost marshal or his deputy, and a defendant may be held to bail for any sum above £20 currency, upon affidavit of the debt made before one of the judges or the prothonotary, and filed, but not otherwise.

There appears to be no legal mode by which a plaintiff can attach, in the hands of a third person, debts due to the defendant.—3 Rep. W. I. C. 2d series, 60, 61.

Written depositions of witnesses are allowed to be given in evidence, provided it be proved by affidavit that the witness is not in the colony at the time his deposition is tendered; and they are taken under the usual precautions of *de bene esse* examinations, according to the provisions of the General Court Act.—3 Rep. W. I. C. 2d series, 62.

Judgment may be entered up at any time after the expiration of eight days next after the trial of the last cause in term (which is here called the adjournment day), and execution may issue on the day after such adjournment day.

Lands are bound by the judgment from the time of its being signed by the judge and filed with the prothonotary, (which is equivalent to docketing in England,) and such lands may be sold under the writ of *feri facias*. Goods and chattels are bound only from the time the execution is lodged with the provost marshal.

No *elegit*, nor any process in the nature of such a writ, is known in practice here.

A judgment after one year becomes superannuated, and must be revived by *scire facias*.

Executions are, it is said, very generally suspended and used as securities.

Lands in the hands of the heir or devisee are liable for the debts of the deviser or ancestor, if the personal assets in the hands of the executor or administrator are insufficient to pay the same.

An equity of redemption may be sold under an execution issued on a judgment of this court.

An appeal lies from this court to the Court of Error (composed of the Governor and Council) in all cases

where the sum in dispute amounts to £300 sterling, and the proceedings in the court below are at once stayed by the writ of error.—3 Rep. W. I. C. 2d series, 63.

*Revenue Jurisdiction of the Superior Court and  
Escheats.*

It appears that the General Court has never exercised any distinct revenue jurisdiction as a Court of Exchequer, whether in regard to escheats or the like, but in cases of persons dying intestate and without heirs, or legal personal representatives, seised or possessed of real or personal estate, (which however is not of common occurrence in the colony,) the proceedings are laid before the Governor, as chancellor, as to the escheat of the real estate, and before the Governor, as ordinary, with regard to the personal property, the nominee of the crown obtaining letters of administration to the estate and effects of the deceased intestate.

The practice with regard to the cases of such coloured persons, possessed of moderate property, as may die intestate, leaving only illegitimate children, appears very liberal, it not being usual for the Attorney-General or other officer of the Crown to put in motion any process of escheat.—5 Rep. W. I. C. 2d series, 63, 64.

*Inferior Court.*

This court, over which one judge alone presides, who is appointed by the king's representative and holds his office during pleasure, was established by colonial enactment in the year 1796, and by the Court Act in force at the time of the commission (viz., 45 Geo. 3, c. 22,) had jurisdiction over "all debts whether by bond, note, account, book debt, assumpsit, or otherwise, and also all complaints for trespasses, damages, or injuries sustained, where the rights of the crown, and the titles of lands are not concerned, provided the debt sued for, or the damages laid, shall exceed the sum of £3, and be not more than £20 lawful money of these islands." The jurisdiction of the court has since been raised to £40 currency.

The jurisdiction of this court extends beyond the island of New Providence to all other islands and keys

within this government except Turk's Islands, which have been specially provided for. No appeal lies from the decision of this court to any other tribunal.—3d Rep. W. I. C. 2d series, 64.

### *Courts of Appeal and Error.*

An appeal lies, though the right appears to be rarely exercised here, from the judgments of the General Court, to the Governor and Council as composing a Court of Error, and from the latter tribunal to the King in Council, under the provisions of the 10th section of the General Court Act (Bah. Law, vol 2, p. 7,) as amended by 6 Geo. 4, c. 8, and of an express article in His Majesty's instructions to the governor, but no appeal will lie in the first instance, except from the Court of Chancery, to the King in Council.

No judge who sat as a member of the court below, when the judgment appealed from was pronounced, can sit as a member of the Court of Error upon the hearing of the appeal from his decision; but he is at liberty to be present at such hearing, and to assign the reasons of the judgment given in the court below.

Twenty days is the time limited within which the writ of error, (which is obtained on application to the governor and giving due security to prosecute,) must be procured, and on the issuing of the writ, all process of the court below is at once stayed.

Costs are considered in the discretion of the court, and are taxed by the clerk of the council, who is also *ex officio* clerk and registrar of the Court of Error. His fees are, as indeed all the fees in this court, the same as those charged in the Court of Chancery.

### *Court of Chancery.*

The judges of this court are the Governor of the colony for the time being, (who presides,) and the members of His Majesty's Council.

The court possesses the same ordinary jurisdiction, within the colony, in addition to its general equity jurisdiction, as is exercised by the Court of Chancery in England. In the cases of idiotcy and lunacy, a special power is delegated to the Governor, by the express words of his instructions.

In the case of infants the court has authority to appoint guardians to their persons and estates.

This court has no jurisdiction to assign dower; but it may cause partition to be made of lands held in joint tenancy, or tenancy in common, or coparcenary.

The proceedings of this court are, in all material points, analogous to those in England, and the books of practice which are used there, govern the practice and proceedings here.

Bills to perpetuate the testimony of witnesses are entertained by this court, and it also issues commissions to examine witnesses *de bene esse*.

This court would entertain a bill on behalf of a married woman for a separate maintenance, on account of misconduct by the husband, on the ground that the wife would otherwise be without remedy, inasmuch as a divorce *propter scævitiã* could not be obtained in the Court of Ordinary in this colony, the jurisdiction of which is expressly confined to the granting of marriage licenses and the probate of wills.

Bills for the foreclosure of mortgages are stated to be altogether unknown in the practice of this court, in consequence of the facility afforded to mortgagees by section 10 of the Consolidated Court Act, under which the real property of the mortgagor, when sued at law upon his bond, may be taken in execution and sold.

In this colony no preference, it is said, is given to debts necessarily incurred for the expenses of a plantation, such as charges for supplies and repairs necessary to render the estate productive. In other colonies, where the opposite practice prevailed, the commissioners were universally in favour of its continuance.

The number of masters attached to this court (and who also act as examiners) is not fixed or limited.

They give no security for the due discharge of the duties of their office.

It is not requisite that a master should be a barrister, nor is any particular qualification necessary to his eligibility.

Their duties are the same as are required of the like officers of the Court of Chancery in England.

They never retain the money of the suitors in their hands, the same when received being paid into the registry of the court, or to the parties entitled thereto under the decree of the court.

The public secretary, or registrar of records of the colony, discharges the duties of registrar of this court, which are stated to be generally the same as those executed by the like officer or his deputies in England.—3d Rep. W. I. C. 2d series, 65, 66.

#### *Court of Ordinary.*

The jurisdiction of the Court of Ordinary in the Bahamas, is derived, as in all the other colonies, from the King's commission to the Governor, and a special article in the governor's instructions.

He possesses no jurisdiction to pronounce a sentence of divorce or alimony.

All wills affecting real or personal property are proved in this court by oath of the executor and one at least of the subscribing witnesses, should the latter be within the colony, if not, by the executor and some person acquainted with the handwriting of the testator. Probate thus passed has no other effect than to authenticate the right of the executor, so far as relates to the *personal* estate of the deceased, nor does the objectionable practice prevail here, as it does in many of the other colonies, of the executor assuming the right to interfere with and possess himself of the *real* estate.

The office of Registrar of this court is exercised (*quasi ex officio*) by the public secretary of the records of the colony, and with him all the original wills, after they have been proved, are left, in order that they may be put on record, and afterwards remain in the registry. The probate is recorded with the will; inventories and appraisements of the estates are recorded also.

The proceedings in this court in contested cases are said to be analogous to those in England.—3d Rep. W. I. C. 2d series, 67.

#### *Court of Vice-Admiralty.*

The jurisdiction of the Vice-Admiralty Court in these islands, is derived from His Majesty's commission of Vice-Admiral to the Governor.

The judge is removeable at the pleasure of the Crown. He receives no salary, nor do the officers of the court, the registrar and marshal, but they are all paid by fees, which



are established by an Act of Assembly of the colony (7 Geo. 4, c. 4.)

In no case is the court aided by a jury.

The subject-matters of its jurisdiction are, generally speaking, cases of revenue seizures. Cases of salvage and suits for seamen's wages are, it is said, rarely brought before the court.

The laws which this court follows in the discharge of its functions are those by which the High Court of Admiralty in England (sitting as an Instance Court of Admiralty) would be governed. The jurisdiction of this court extends to cases of smuggled goods.

Parties desirous of appealing from this court to the High Court of Admiralty in England, must pray for such appeal within fourteen days after judgment, and enter into a bond in £200 sterling to prosecute the same.—3 Rep. W. I. C. 2d series, 68, 69.

#### *Court of Admiralty Sessions.*

This court derives its jurisdiction from a Colonial Act passed in the year 1805, which empowers the Governor to issue a commission under the great seal of these islands, directed to the judges of the Vice-Admiralty Court for the time being, the judges of the General Court, and such other substantial persons as by his Excellency shall be named, for the trial of all murders and other offences committed on the high seas, where the Admiralty hath jurisdiction.

The sentences of the court, which are in all cases submitted to the Governor before being carried into execution, are not considered by the local authorities subject to revision by any other court, but a motion in arrest of judgment might, they said, be made in this as well as in the General Court.

The officers of this court are the provost marshal and the clerk of the crown, the former of whom is appointed by the Crown and has a salary of £50 currency, the latter by the Governor with a salary of £40 currency; they receive no fees, and are removable at pleasure.—3 Rep. W. I. C. 2d series, 69.

#### *Justices of the Peace.*

The justices of the peace in this colony are appointed by the Governor, and are removable at his pleasure.

Their duties generally are of the same nature as is exercised by justices of the peace in England ; and, in addition, they are empowered by a local act (13 Geo. 3, c. 1,) to decide in a summary way " civil claims for all manner of debts, trespasses, or damages, to the value of £3 Bahama currency, or under, wherein the title to lands is not concerned."

Their mode of taking examinations on criminal charges and recognizances does not differ from the practice in England.

#### *Free Coloured Persons.*

By the Colonial Act, 29 Geo. 2, all persons above three degrees removed in a lineal descent from the negro ancestor exclusive, are deemed whites, and entitled to all the privileges of that class, provided they are free and brought up in the Christian religion.

#### *Escheats.*

In cases of escheats, slaves, it was said, would become the property of the Crown. This rule must of course be subject to alterations as to the possession of such property now introduced by the Slavery Abolition Act.

#### *Insolvents.*

There are no bankrupt laws in this colony, and the examiners said that their introduction would be by no means desirable. By the law at present in force, under which no frauds have been committed, and which indeed, the examiners said, in express terms, " has been found to be a sufficient security to the creditor," a prisoner for debt, on delivering up upon oath in the usual form, all his property to his creditors, and making affidavit that he is unable to maintain himself, is entitled to an allowance from the creditor of 1s. 6d. *per diem*, and on failure of payment of the same to be discharged.—3 Rep. W. I. C. 2d series, 73.

#### *Attorney and Solicitor-General.*

The duties of these officers differ in no respect from those of the Attorney and Solicitor-General in the other

colonies visited under the commission, and they, in like manner, are appointed by the Crown and removable at pleasure.

The Attorney-General has a home salary of £150 sterling, and a colonial salary equal to £263. 10s., besides fees, which are regulated by the fee bill in the General Court Act. The Solicitor-General has no salary.

#### *Colonial Secretary.*

The Colonial Secretary is appointed by the Crown and is removable at pleasure. His home salary is £150 sterling, the colonial salary £495. 16s. 8d. (including £250 currency per annum as clerk to the legislative council,) and his fees, which are regulated by a colonial tariff, are calculated on an average at £575 sterling per annum.

The duties of this officer, which are precisely similar to those of the same officer in the other colonies, are executed by deputy as well as in person, and neither of the persons gives any security to the colony.

In addition to holding the appointment of colonial secretary, this officer is *ex officio* clerk of the Legislature and of the Council, and registrar of the Courts of Chancery, Ordinary, and Error, respectively.

#### *Provost Marshal.*

This is a patent office held under the Crown, by which authority only this officer says he is removable, but that he may be temporarily suspended by the colonial government. He has held the appointment (1825) since September, 1787. He gives bond to the King with two sufficient sureties (approved by a justice of the General Court) in £1000 currency.

The same individual who fills the office of provost marshal general of the colony, is also provost marshal of the Court of Admiralty Sessions and of the Inferior Court. His emoluments are thus enumerated by him;—“As provost marshal he has an annual salary of £180 sterling from the Crown, payable in England; in lieu of all demands against the colony for ordinary services, he has a further annual salary of £450 currency; as marshal of the Admiralty Sessions £50 currency; and as marshal of the Inferior Court for the Recovery of Small Debts in

New Providence, £60 currency. These emoluments are independent of fees, which are regulated by colonial enactments.—3 Rep. W. I. C. 2d series, 74.

#### *Coroners.*

There are two coroners within this government, one for the island of New Providence, the other for the Turk's Islands.

Their duties, powers and authorities, were stated to be similar to those of the same officer in England. They receive no salary, but are entitled by a Colonial Act to a fee of £6. 18s. currency on each inquest.—3 Rep. W. I. C. 2d series, 76.

#### *Police Magistrate or Officer.*

This officer is appointed by the Governor and removable at his pleasure. His duties at the time of the commission were regulated by the Colonial Act, 57 Geo. 3, c. 8, and since by the 8 Geo. 4, c. 2. They do not seem to call for any particular observations. He has a salary of £800 currency, with certain fees as regulated by the Colonial Fee Bill.—3 Rep. W. I. C. 2d series, 76.

#### *Appeals to the King in Council.*

An appeal to His Majesty in Council lies immediately from the decree (but in no case from the interlocutory order) of the Court of Chancery, provided the sum in dispute (exclusive of costs) exceeds £500 sterling, and that the appeal be craved and entered within fourteen days; an appeal lies also to the same tribunal from the Court of Error, after a cause has been carried thither from the General Court.

It is the province of the Governor, and to him must application be made, to grant an appeal to the King in Council.

Personal security is, it seems, admitted in cases of appeal.—3 Rep. W. I. C. 2d series, 76.

#### *Foreign Judgments and Contracts.*

A judgment obtained in England, or elsewhere, is held

of no other force and effect in the courts of this colony than that upon an action of debt brought in the colony the record of judgment properly authenticated would be held evidence of the debt, supposing of course that, on the face of it, it did not appear unjust and contrary to reason.

The judgments of an English court of competent jurisdiction, in cases of bankruptcy, have been held in this colony valid, so far as that the assignees have taken possession of the bankrupt's personal property, and brought actions against others for debts due to the bankrupt. The real estate of the bankrupt has been in such cases conveyed by deed from the bankrupt to the assignees.

When the guardian of a minor, appointed in England, has been desirous of disposing of or incumbering the property of his ward within the colony, it has been usual, it appears, to obtain for that purpose a private Act of Assembly, the expense of which is said to be very trifling.—3 Rep. W. I. C. 2d series, 76, 77.

#### *Absentees.*

No process can issue from the courts here against a person who has never been in the colony. If a former resident has removed and been absent twelve months, service of process at his last place of abode will be good, provided the cause of action arose previously to his departure.—3 Rep. W. I. C. 2d series, 77.

#### *Marriages.*

Marriages are usually solemnized in this colony by a minister of the established church, after the publication of banns, or by license from the Governor as ordinary. (2) Where there is no resident minister (as in the out islands) the Governor, by license, authorizes some magistrate to perform the ceremony. The only Act of Parliament relating to marriages in force here is the 32 Hen. 8, c. 8.

On a question which was put by the commissioners as to the effect of a marriage celebrated abroad according to the law of the country, where the same was had be-

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(2) See ante, p. 32.

tween persons possessed of real property, in regard to this property, supposing the law of the two places to differ thereon, the examiners stated as their opinion that the wife would in such case be entitled to dower in the real estate, according to the laws of England which prevail here, and they thought it would make no difference in this respect whether the marriage had been celebrated *bonâ fide*, or *in fraudem legis domicilii originis*.

The examiners further stated that a marriage celebrated out of the colony, between parties who had children before such marriage, would not have the effect of legitimating such children in this colony, although a contrary law might prevail where such marriage was solemnized, as in Scotland, for example.—3 Rep. W. I. C. 2d series, 77, 78.

#### *Wills, Intestacy, &c.*

In regard to the power of devising and bequeathing real and personal estate in this colony, and the solemnities requisite to the validity of a will disposing of the same, the law of England is followed here; and no distinction prevails in this respect between the wills of white or of coloured persons.

In the case of a devise of lands in this colony by a will executed abroad, the examiners said the same would be invalid, unless the provisions of the statute of frauds (29 Car. 2, c. 3,) in regard to the number of subscribing witnesses had been complied with.

The law of descents in this colony, and the law for the distribution of personal estates in cases of intestacy, follow in all respects the laws of England regulating the same matters.—3 Rep. W. I. C. 2d series, 78.

#### *Passes to Quit the Colony.*

By an act of this colony (1 Bahama Laws, p. 343,) every person who has been resident therein for thirty days or upwards, wishing to depart, is obliged to affix his name to a paper in the colonial secretary's office, and to give fifteen days' notice of such his intention, before he can obtain what is called a pass. This pass may be withheld at the instance of any creditor of the person so announc-

ing his intended departure, by the creditor lodging his *caveat* thereto, and the latter is not bound to enter into any security to answer condemnation in costs and damages upon subsequent judicial proceedings being had in the matter.

There is a mode of proceeding in this colony similar to that of the *ne exeat regno* in England. It is by a writ of *ne exeat insulis* issuing out of the Court of Chancery, and is applied for on the same grounds, and granted on bill, petition, and affidavit as in England.—3 Rep. W. I. C. 2d series, 78.

## THE BERMUDAS

OR

### SOMERS' ISLANDS.

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THE Bermudas are situated between the 31st and 32d degrees of north latitude, and the 64th and 65th of west longitude. Their first name is said to be derived from John Bermudez, a Spaniard, who touched upon them in 1522, and found them destitute of inhabitants. Their second appellation they take from Sir George Somers, who was wrecked on them in 1609. The cluster of islands is said to be 400 in number, the far largest portion are however nothing more than uninhabitable rocks, the whole of the *inhabitable* part containing little more than 12,000 acres. The climate of the Bermudas is said to be salubrious. The soil is fertile and capable of producing every article of West India produce. The chief island is St. George's, which is about sixteen miles in length, and at most three in breadth. It contains a town of the same name.(1)

#### HISTORY AND CONSTITUTION.

The honour of being the earliest visitant of these islands is claimed for an Englishman named May, who was wrecked upon them, but they were certainly not settled till after the shipwreck of Sir George Somers. That gentleman returned to Virginia in a cedar vessel constructed by his men from the timber growing on the islands, and which vessel it is said did not contain one ounce of iron, except a bolt in the keel. The fact probably was, that the shipwrecked mariners had lost almost every thing, and that necessity compelled them to build this vessel without

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(1) 4 B. Edw. 231 to 240.



the aid of this most useful metal. The colony of Virginia happened at the moment of Sir George Somers's return to be distressed by famine, and his account of the abundance of black swine which he had seen at Bermuda induced Lord Delaware, who was then Governor of Virginia, to send him back for a supply. Sir George died almost immediately after his arrival at Bermuda, and his crew, instead of performing their duty, sailed for England, leaving however one of their number on the island. This man soon joined two others who had escaped at the time Sir George was first wrecked there. The Virginia Company, pleased with the account they had received of these islands, claimed them by the title of first discoverers, and immediately afterwards sold their right to 120 persons, who obtained a charter in 1612 from King James, and commenced the settlement of their new purchase. In 1619, when the beauty and fertility of the island had become well known in England, Captain Butler went out as Governor, and carried with him a body of 500 settlers. The white population was found, in consequence of this accession of strength, to amount to 1000 persons. Captain Butler therefore deemed it expedient to introduce a House of Assembly. The population was afterwards still more considerably increased by the number of persons who retired to Bermuda to avoid the civil distractions of their native country. The present population is estimated at about 4000.

#### COURTS.

The courts for the administration of justice are the Court of Chancery, the Court of General Assize, Court of Exchequer, Court of Ordinary, Court of Admiralty, and Court of Quarter Sessions.

#### *Court of Chancery.*

The Governor and His Majesty's Council, or any five of them, of whom the Governor must be one, constitute this court.

The court has similar jurisdiction and powers to those possessed by the Court of Chancery in England.

### *The Court of General Assize*

Is a Court of Record, and has "the like powers, properties, rights, superintendance, force, effect, jurisdiction, authorities, pre-eminence and advantages which belong to or are enjoyed, used, or in any manner practised in and by the Courts of King's Bench, Common Pleas, Oyer and Terminer, General Gaol Delivery, and Assize in England," and is held at the town of Hamilton by a chief justice and one or two, but not more, assistant justices.

This court holds pleas in all manner of causes, suits, and actions, civil and criminal, and it is empowered to make such rules, regulations, and orders, respecting merely the practice of the court, as may be expedient, and as nearly as conveniently may be agreeable to the rules of practice established in the common law courts of Westminster-hall. An appeal from this court lies by writ of error to

### *The Court of Error,*

Consisting of the Governor and Council, or any five of them, (with the exception of such as may be judges of the court appealed from,) of which five the Governor must be one, and if the judgment entered, or debt or demands laid exceed £500 currency, an appeal lies from the Court of Error to the King in Council.

This court may make rules of practice merely for writs of error, and agreeable to the laws and practice of England.

There are other courts for administration of justice in this island, as a Court of Exchequer, a Court of Ordinary, an Instance Court of Admiralty, and a Court of Quarter Sessions; but the Acts of Assembly do not define either their jurisdiction or powers. It may however be concluded that they are similar to the corresponding courts in the other West India Islands. (2)

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(2) Howard's Laws of the Colonies, vol. i. p. 363, 364.

## PARTICULAR LAWS. (3)

3 ANNE.—*An Act for settling Intestates' Estates.*—Confirmed 3d August, 1704.

All the goods, chattels, and estates of all and every person or persons of or in these islands, dying intestate, shall be disposed of and distributed by and amongst such persons, and in such manner and form, as is directed by the Act of Parliament, 22 & 23 Car. 2, c. 10.

27 GEO. 3.—*An Act for the better Settling of Intestates' Estates.*—13th July, 1787.

Administration of intestates' effects in these islands to be grantable to the widow or next of kin to the deceased, or both, and on their default, to a creditor or such other person as the Governor approves.

Clear residue of intestate's estates to go one-third to the widow, and two-thirds equally among the children, and the representatives of deceased children, other than child (not being heir at law) advanced by intestate in his lifetime, equal to share belonging to unadvanced children. Advanced children to share equally with other children, on bringing the advancement into hotch-pot.

Heir to share equally with other children notwithstanding land he may have.

If there be no child or representative of one, half to go to the widow, and half among next of kin of equal degree, and their representatives, but none among collaterals after brothers' and sisters' children.

If no wife, the whole to go to the children if there be any, otherwise to the next of kin.

Not to extend to estates of *femes covert*, which husband may administer to and keep.

If intestate leave no father, wife, or children, his mother, brothers, and sisters to share his estate equally.

Estate of intestate not to be distributed till one year after his death, and parties participating therein to give bond for refunding their saleable part, to enable adminis-

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(3) See ante, p. 3 to 16, on the general topic how far the colonies are subject to the laws of the mother country.

trator to pay debts of deceased discovered after such distribution.

Governor may grant administration *cum testamento annexo* as heretofore.

6 ANNE.—*An Act for Quieting Estates and preventing Law Suits.*—Confirmed 26th June, 1708.

If any persons, or their heirs, have quietly held any lands, &c., in these islands for the term of twenty years, accounting from the time of the first entry thereon, without any claim or acknowledgment for the same demanded or paid, that then the said lands, &c. so held shall be accounted a good and sufficient right and title to them and their heirs for ever, and that all persons not claiming and prosecuting the same effectually in some proper court of record in these islands, within the time limited, shall be utterly excluded from all claim, any law, statute or ordinance to the contrary notwithstanding; nevertheless, the true intent and meaning hereof is, that nothing herein contained shall for the future extend or be construed to hinder any person or persons who shall have any claim or title, in reversion or remainder, to any lands, &c. within these islands; but that all such persons may claim or bring his or their suit or action, and prosecute the same at any time within twenty years from the cause of action or title accrued, and for want of such claim or prosecution to effect in these islands, to be utterly disabled and barred for ever.

Nothing contained in this act shall extend to any feme covert, person of unsound mind, infant, person imprisoned, or otherwise hindered beyond the seas; but that any such person or persons, notwithstanding the said twenty years are expired, may claim or bring his or their suit or action, any thing herein contained to the contrary notwithstanding: Provided that every such person shall put in his suit or claim and prosecute the same effectually within some Court of Record within these islands, within the term of seven years next ensuing after their discoverture, coming to sound mind, or of full age, being at liberty, and returning into these islands, otherwise to be for ever excluded.

19 GEO. 3.—*An Act directing what Conveyances shall be sufficient to pass the Real Estates of Women under Coverture.*—22d May, 1779.

All wills, deeds, or other conveyances heretofore made and executed by any woman under coverture, for valuable

consideration, for the passing of any lands or tenements in these islands, shall be deemed and are hereby declared to be as good and sufficient for the conveying of such lands and tenements, to the grantees or devisees in such deeds or wills named, as if such woman had not been under coverture; unless it can be made clearly to appear that such deeds or wills were executed contrary to the will and desire of the feme covert who executed the same.

Any deeds or other conveyances executed by any women under coverture, and their husbands, for any lands or tenements in these islands, shall be as sufficient and effectual for the conveying and assuring such lands or tenements to the grantees in such deeds or conveyances named, as if such women had not been under coverture: Provided that the woman executing such deeds, &c., being for that purpose privily examined by the Chief Justice of the Courts of Common Pleas, King's Bench, and Assize, (4) for the time being, do confess that she executed such deeds, &c. voluntarily, and without the fear, threat, or compulsion of her husband, and a certificate of such confession, under the hand and seal of such chief justice, be indorsed on the back of such deeds, &c., and that such deeds, &c. be recorded in the secretary's office of these islands within six calendar months next after the execution thereof.

43 GEO. 3.—*An Act in Addition to an Act intituled "An Act directing what Conveyances shall be sufficient to pass the Real Estates of Women under Coverture.*—  
—28th July, 1803.

The chief or any assistant justice may issue a commission to any person to take the private acknowledgment of any feme covert who may have executed with her husband any deed for passing her real estate, such acknowledgment to be indorsed on, or annexed to such deed, under the hand and seal of the commissioner.

Any deed made by a feme covert of her realty, and acknowledged by her before the chief, or if none, or absent, any assistant justice or a commissioner, to bar such feme covert of her dower in such realty.

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(4) Or a commissioner, see 43 Geo. 3.

22 GEO. 3.—*An Act as well for the Limitation of certain Personal Actions and avoiding Suits, as for the Amendment of the Law and the better Advancement of Justice.*—30th March, 1782.

All warranties made by any tenant for life of any lands, &c., the same descending or coming to any person in reversion or remainder, shall be void and of none effect; and likewise all collateral warranties made of any lands, &c. by any ancestor who has no estate of inheritance in possession in the same, shall be void against his heir.

26 GEO. 3.—*An Act to prevent Frauds and Abuses in Mortgages, or other conditional Conveyances of Property.*—10th May, 1786.

All persons holding mortgages, &c. which shall be made and executed by any person of these islands, shall give into the secretary's office of these islands the names of the mortgagor and mortgagee, the date of such mortgage, &c., the particular property mortgaged, &c., and the sum secured thereby; and in case any person holding such mortgage, &c. shall omit or neglect to comply with the directions before mentioned, that then any person who shall accept any subsequent mortgage, &c. on the same property, and shall first give to the said secretary's office the substance of such subsequent mortgage, &c., in such manner as hereinbefore directed, shall be deemed the first mortgagee of such property, and recover the sum or sums of money secured by such subsequent mortgage in any Court of Record in these islands, in the same manner as if such property had been first conditionally conveyed to him; and that all other mortgages, &c. shall take place and their validity be ascertained and determined in such regular succession as they shall be registered in the said secretary's office, in the manner before directed.

The secretary for the time being, or his deputy, shall, when required, register in a book for that purpose to be kept, the substance and contents of any mortgage, &c. in the manner hereinbefore directed, together with the time when such report shall be to him made.

26 GEO. 3.—*An Act for the better Recovery of Debts due on Promissory Notes, and the Assignment of Bonds, Obligations, and Notes.*—10th May, 1786.

It shall and may be lawful for any person or persons to assign any bond, &c. by which the payment of any mo-

nies shall be secured to such person or persons to any other person or persons whatsoever, and that the assignee or assignees, indorsee or indorsees, of such bond, &c., by virtue of such assignment or indorsement, shall have lawful power to commence and prosecute any suit at law, in his or their own name or names, for the recovery of any debt due by such bond, &c., as the first obligee might or could lawfully do: Provided that in any bond, &c. so made, assigned, indorsed, or transferred, the plaintiff shall allow a discount of all demands which the defendant can prove, either against the plaintiff himself or against the first obligee, before notice of such assignment was given to the defendant.

Act to continue in force till June 1st, 1796. (Continued by subsequent acts to June 21st, 1826.)

27 GEO. 3.—*An Act declaring Houses, Lands, Tenements, and other Hereditaments and Real Estates, in the Island of Bermuda, to be subject to the Payment of Debts.*—14th July, 1787.

Real estates in the Bermuda Islands are declared subject to the owner's debts of every kind, and may be seized, extended, and sold as personal estate for the like purposes.

When the chattels of deceased are insufficient, the Court of Chancery may empower the executor or administrator to sell all or sufficient part of deceased's real estate (widow's dower excepted) to pay his debts, and such executor or administrator may then convey such real estate to the purchaser. Such assets to be applied in same order as personal estate.

Voluntary alienation of real estates are declared void against creditors.

29 GEO. 3.—*An Act to enable the Holders of Small Parcels of Land within the Bermuda Islands, in Fee Tail, to alter the same to Fee Simple, and directing the Mode of doing the same.*—15th July, 1789.

Tenants in tail of not exceeding five acres may alter such estate to a tenancy in fee by bargain and sale, feoffment, or lease and release recorded in the secretary's office: Provided that this act is not to be construed to confirm or better any original title. Such conveyances, when executed by married women, to be accompanied

with the requisites prescribed by the 19 Geo. 3, ante, p. 392.

60 GEO. 3.—*An Act for the Relief of Insolvent Persons.* (5)—7th January, 1820.

All the estates of persons discharged to vest on their discharge in the provost marshal, who, or his deputy, must assign the same to such creditors as may apply in nine months, or to such of them as the majority may elect.

Such assignees to have the same power of selling or conveying such estate as the debtor himself had.

Such prisoner's estate and the proceeds thereof to be held in trust for the creditors.

Not to prevent creditors bringing actions for their debts.

The English statute of frauds has been held not to apply to Bermuda, and therefore that a real estate there would pass by a will made in the colony though not executed in the manner required to pass real estates according to that statute.

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(5) This act was for the relief of persons who were upon, and for eighteen months previous to December 2d 1819, in prison.



## THE CANADAS.

THIS country lies between the 45th and 52d degrees of north latitude, and the 63d and 81st of west longitude from Greenwich. The territory of Hudson's Bay or East Maine is its northern boundary. The Gulph of St. Lawrence, the River St. John, and part of the Labrador coast bound it on the east. Its southern limit is formed partly by New Brunswick and partly by a portion of the territory of the United States, viz. the district of Maine, the province of New Hampshire, the state of Vermont, and that of New York. The western boundary was settled by the Act of Parliament of 1791, dividing the province of Quebec. The line running between the provinces of Upper and Lower Canada is by that act directed to commence "at a stone boundary on the north bank of the lake St. Francis, at the Cove of Pointe au Baudette, in the limit between the township of Lancaster and the seignory of New Longueil, then along the northern boundary of the seignory of Vaudreuil running north twenty-five degrees east until it strikes the Ottawa river, to ascend the said river into the lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country known by the name of Canada."—Bouchette's Topography, pp. 1, 3. Supp. Encyclopædia Britannica.

The boundary line between the province of Upper Canada and the United States was finally settled by the King of the Netherlands.

### HISTORY AND CONSTITUTION.

In the year 1497 Sebastian Cabot, holding a commission from Henry 7, of England, discovered the countries situate on the south-west of the St. Lawrence. The Eng-

lish, however, did not make any use of the discovery, but the French began to fish for cod on the banks of Newfoundland and along the coast of Canada early in the sixteenth century.

The territory now known by the name of Canada was until 1759 in the possession of France, and, together with the remainder of her possessions in that part of America, was distinguished by the appellation of La Nouvelle France.

Before the year 1600 many expeditions had sailed from France to colonize Canada, but all of them seemed to have failed most miserably. About 1605 Quebec was built, and from that time the settlements went on increasing. In 1629 Canada was taken by the English, but was then held in so little estimation as to be returned to the French within three years afterwards.

In 1663 Canada, which had till that period been a proprietary government, was raised to the dignity of a royal government, and from that time its Governors were appointed by a regular commission from the King.

In 1759 it was conquered by General Wolfe. By the second article of the capitulation of Quebec, dated 18th September, 1759, the inhabitants were to be maintained in the possession of their houses, goods, effects, and privileges. The sixth article guaranteed the free exercise of the Catholic religion. By the twenty-seventh article of the capitulation of Montreal and the province of Canada, the free exercise of the Catholic religion was guaranteed; and the forty-sixth article secured all the privileges of trade to the Canadian merchants as to the other subjects of His Britannic Majesty. By the treaty of Paris, signed 17th February, 1763, the Canadas were ceded to His Britannic Majesty, under certain provisions, founded in some measure on the articles of capitulation before referred to. On the 7th of October in the same year the King issued a proclamation, the objects of which were these. Both by the capitulation and by the treaty of Paris the inhabitants of Canada were treated as British subjects;—in conformity with that understanding the proclamation was issued, and no distinction whatever was made between the old and newly-acquired subjects. The English criminal and civil law was established, with the laws of the Admiralty, and the trial by jury was to be employed in both criminal and civil cases. In 1774 a portion

of the old laws, chiefly relating to real property, was re-established by the authority of an Act of Parliament, called the Quebec Act. The effect of the general manner in which this act was worded, was to take away the habeas corpus and the trial by jury, but these were re-established, the first in 1784, and the second in 1785, by two ordinances issued under orders from England. In the year 1791 an Act of Parliament, which divided Canada into the two provinces of Upper and Lower Canada, conferred on the people of both provinces their present representative governments. Mr. Pitt stated, on moving for leave to introduce the bill, that its object was "to put an end to the competition between the old French inhabitants and the new settlers from Britain or British colonies, which had occasioned the disputes and uncertainties respecting law, &c." The legislative body was to be composed of the Governor, the Legislative Council, and the House of Assembly. The administrative body consisted of the Governor and an Executive Council. The Executive Council of Lower Canada is composed of twelve members. (1) The Legislative Council is composed of thirty-three members, who are appointed by the Governor.—Report of Select Committee on Canada, July 22d, 1828.

The House of Assembly in each province is elected every four years. By a proclamation of Sir A. Clarke, in 1792, the province of Lower Canada was divided into twenty-one counties, and the number of members to be returned was fixed at fifty. The qualification required

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(1) This statement is in part taken from Mr. Bouchette's book, the most recent work on Canada, in which the details of the form of government in that province are referred to. The Almanack for Lower Canada, for the year 1828, disagrees from Mr. Bouchette as to numbers, in this and one or two other instances. The Almanack gives a list of the members, who amount only to eleven, including the Lord Chief Justice of the province and the Lord Bishop of Quebec, both of whom appear to hold seats in the Council in virtue of their respective offices. The list of names of the members of the Legislative Council,

in like manner, amount only to twenty-seven, including the Lord Chief Justice of the Province, who is Speaker of the Council, and the Lord Bishop of Quebec. The list of the members of the House of Assembly of the Lower Province contains the names of fifty persons. The same Almanack gives the names of seven members of the Executive Council for Upper Canada, of twenty members of the Legislative Council, and of forty-seven members of the House of Assembly there. The number of representatives for Lower Canada has since been altered by Act of Assembly. (See post.)

for a member is to have real property yielding 60s. a year in the county, or £5 in the cities, or to pay a rent of £10.—Bouchette, 1 to 24.

By a bill amended by the Legislative Council and agreed to by the House of Assembly on the 11th of March, 1829, the number of representatives for Lower Canada was fixed at eighty-four, the principle of which is to give two members for every 4000 inhabitants and upwards, and one for every number less than 4000 and above 1000. If the inhabitants are less in number than 1000 they are to vote in the next county.

On the 7th of March, 1820, was passed an Act of the Assembly of Upper Canada, reciting that from the rapid increase of the population of the province the number of representatives was too limited, and enacting that in future "each and every county was formed and organized, or which shall or may hereafter be formed, the population of which shall amount to 1000 souls, shall be represented in the Provincial Parliament by one member, and when it amounts to 4000 by two members; and that every town in which the Quarter Sessions for the district are held, containing a population of 1000, shall likewise be represented by one member."—Report of the Select Committee on the Civil Government of Canada, 22d July, 1828. House of Commons' Papers, 569.

All the judges are appointed by the Governor. (2) The sheriff is an officer of the court removable at the will of the Governor, and receives a salary for the performance of his duties.

The Governor of the respective provinces has power also, from time to time, by an instrument under the great seal of the province, to appoint and remove the speakers of the Legislative Councils of such provinces respectively.

All questions before the Legislative Council and Assembly are determined by a majority of the persons present; and if they be equally divided in opinion, then the speaker of the Council or of the Assembly, as it may be, has a casting vote.

When a bill which has been passed by the Legislative Council and by the House of Assembly, in either of the

(2) Query, is not this a mistake? The appointment may in form be under his warrant, but the higher judicial

officers at least are believed to receive their appointments from home. This is the case at least in the other colonies.

provinces, is presented for His Majesty's assent to the Governor, he must, according to his discretion, but subject to the provision of 31 Geo. 3, c. 31, and such instructions as may from time to time be given him in that behalf by His Majesty, declare that he assents to such bill in His Majesty's name, or that he withholds His Majesty's assent from such bill, or that he reserves such bill for the signification of His Majesty's pleasure thereon.

And no bill which is reserved for the signification of His Majesty's pleasure thereon has any force till the Governor of the province makes known, either by speech or message to the Legislative Council and Assembly of such province, or by proclamation, that such bill has been laid before His Majesty in Council, and that His Majesty has been pleased to assent to the same.

An entry is made in the journals of the Legislative Council of every such speech, message, or proclamation; and a duplicate of it, duly attested, is delivered to the proper officer, to be kept among the public records of the province.

Unless His Majesty's assent to such bill so reserved be so signified within two years after it is presented for His Majesty's assent to the Governor, it has no force whatever. (3)

#### COURTS OF LOWER CANADA.

The judicial establishments of the colony are few and simple in their construction.

At both Quebec and Montreal there is a separate independent court,—the first, the Court of King's Bench for the district of Quebec, the second, the Court of King's Bench for the district of Montreal. Both these courts have a criminal and a civil side. There is also an Admiralty Court, in which a single judge presides. He is generally one of the judges of the Court of King's Bench. At Three Rivers there is a Provincial Court, over which a single judge also presides, and Gaspé and St. Francis possess each a court of the same description. From all these courts, except the Admiralty Court, there is an appeal to a Court of Appeals at Quebec, composed of the

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(3) Howard's Laws of the Colonies, vol. ii. p. 1, 5. But see ante, p. 44. The order in Council there referred to says three years.

Governor, or Lieutenant-Governor, the members of the Executive Council, the Chief Justice of the Province, and the Chief Justice of Montreal; any five of whom, the judges of the court in which the judgment appealed from has been given excepted, form a court.

### *The Court of King's Bench*

Consists of one Chief Justice, who is styled Chief Justice of the Province of Lower Canada, and of three Puisne Judges.

The law officers of the crown are the Procureur du Roi, the Solicitor-General, and the Advocate-General.

The Court of King's Bench at Montreal consists of a Chief Justice of the Court of King's Bench for the district of Montreal, and of three other judges.

There is also a court at Three Rivers, where the Chief Justice of Montreal presides, assisted by two other judges.

The Provincial Court for the same district consists of one of the judges of the Court of King's Bench of Montreal, and one provincial judge.

There are similar courts for the lower district of Gaspé and for the lower district of St. François, each presided over by one provincial judge.

### *Court of Vice-Admiralty.*

This court is held before one judge, who is at present the senior Puisne Judge of the Court of King's Bench for Lower Canada.

### *Coroners.*

There are three coroners, one for the district of Quebec, another for that of Montreal, and a third for that of Three Rivers. Their mode of proceeding is similar to that adopted in England.

### *Quarter Sessions.*

Quarter Sessions are held at Quebec, at Montreal, at Three Rivers, and at Gaspé.

*Salaries of Public Officers.*

From a paper printed by the House of Commons in the year 1830, (House of Commons' Papers, No. 73,) it appears that in 1829 the Lower Canada Assembly voted the following sums for the salaries of the various public officers;—for the Governor-in-Chief £4500; Lieutenant-Governor £1500; Lieutenant-Governor of Gaspé, £300; nine members of the Executive Council £100 each (4); the Speaker of the Legislative Council £900 (5); the Speaker of the House of Assembly £900; the Lord Chief Justice of the province £1500; the Chief Justice of Montreal £1100; six Puisne Judges (three at Quebec and three at Montreal) £900 each; and three Provincial Judges £600 each. The Judge of the Court of Vice-Admiralty (the senior Puisne Judge of the Court of King's Bench at Quebec) £200; the Procureur du Roi £300; the Solicitor-General £200; the Advocate-General £200; the Coroner at Quebec £100; the Coroner at Montreal £100; the Coroner at Three Rivers £50; the Chairman of the Quarter Sessions at Quebec £500; the Chairman of the Quarter Sessions at Montreal £500; the Chairman of the Quarter Sessions at Three Rivers £250; the Chairman of the Quarter Sessions at Gaspé £225.

## COURTS IN UPPER CANADA.

The courts for the administration of justice in Upper Canada appear, from the acts of the province, to be a Court of King's Bench, a Court of Assize for each district, a Court of Appeal, a District Court for each district, a Court of Quarter Sessions for each district, some petty Courts of Requests, a Court of Probate, and a Surrogate Court for each district; there is also a Court of Chancery, but the laws give no information respecting

(4) This would shew Mr. Bouchette's statement as to the number of the Council to be mistaken. The Lord Chief Justice of the province and the Lord Bishop of Quebec, who sit in Council in virtue of their office, would of course receive no salary on that account, and there would then remain, as stated in the Almanack, nine ordinary members.

(5) In the Canada Almanack, the Speaker of the Legislative Council is stated to be the Lord Chief Justice of the province. In the most recent charters of Justice for other colonies the chief justice or any puisne judge is forbidden to accept any other office, and his acceptance, it is declared, shall vacate his office of chief justice or puisne judge.

that, nor indeed any other courts than those which have been just enumerated.—Howard, vol. ii. p. 14.

### *Court of King's Bench.*

This is a Court of Record, (6) and is styled "His Majesty's Court of King's Bench for the Province of Upper Canada." It possesses "all such powers and authorities as by the law of England are incident to a superior court of civil and criminal jurisdiction," and holds "pleas in all manner of actions or suits, as well criminal as civil, real, personal, and mixed, arising, happening, or being within the province; and is authorized to proceed in such actions, causes, or suits, by such process and course as will tend to justice and despatch, to determine the same, and to hear and determine all issues at law, and by a jury of twelve men determine all issues of fact that may be joined in any such action, cause, or suit, and judgments thereon give, and execution thereon award, in as full and ample manner as may be done by the Courts of King's Bench, Common Pleas, or, in matters which regard the King's revenue, by the Court of Exchequer in England."

The judges are a chief and two puisne judges.

This court must sit in a place certain, that is, in the city, town, or place where the Governor usually resides; and the periods for its sittings are during the four terms in each year, viz. (7) Hilary Term, which commences on the third Monday in January and ends on the Saturday of the ensuing week; Easter Term, which commences on the Monday next after April 16th and ends on the Saturday in the ensuing week; Trinity Term, which commences on the first Monday in July and ends on the Saturday of the ensuing week; and Michaelmas Term, which commences on the first Monday in November and ends on the Saturday of the next ensuing week. Where the court has good reason to believe that there will not be sufficient business to require its daily attendance throughout term, it may adjourn on any return day to the next immediate return day.—2 Howard, 14, 15.

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(6) 32 Geo. 3, c. 2, L. C. (7) 3 Geo. 4, L. C. passed 17th Jan. 1822.



*Courts of Assize.*

The Governor may, between Hilary and Easter and between Trinity and Michaelmas Terms, issue commissions of Assize and Nisi Prius into the several districts of the province, for trying all issues joined in the Court of King's Bench, in any action arising in such districts. He may also issue a special commission at any time when necessary.—2 Howard, 15.

*Court of Appeal.*

The Governor, Lieutenant-Governor, or person administering the government of the province, or the chief justice of the province, with any two or more members of the Executive Council of the province, compose this court. But when any person having given the judgment appealed from is a member of the Court of Appeal, he may assign to the court his reasons for delivering such judgment, but not give his vote in the decision of the question before the court.

An appeal lies to this court from all judgments given in the Court of King's Bench, in all cases where the matter of controversy exceeds £100, or relates to the taking of any annual or other rent, customary or other duty, fee, or any other such like demand of a general or public nature affecting future rights, of what value or amount soever the same may be, upon proper security being given by the applicant that he will effectually prosecute the appeal and answer the condemnation, and also pay such costs and damages as may be awarded in case the judgment appealed from shall be confirmed, and upon executing such security, execution is stayed in the original cause.

The judgment of the Court of Appeal is final in all cases where the matter in controversy does not exceed the value of £500 sterling, except it relates to the taking of any annual or other rent, customary or other duty or fee, or any other such demand of a general and public nature affecting future rights, of what value or amount soever the same may be, in which case an appeal lies to the King in Council, upon proper security being given by the appellants effectually to prosecute his appeal and an-

swer the condemnation, and to pay such costs and damages as shall be awarded by His Majesty in Council, in case the judgment appealed from shall be affirmed, and upon the perfecting of such security, execution of the judgment is stayed until the final determination of such appeal to the King in Council.—2 Howard, 15, 16.

### *District Courts.*

In each district within the province there is a Court of Record called "The District Court of ——," which is held before one judge or more, appointed under the great seal of the province. They hold pleas from the value of 40s. to £15, and when the amount is liquidated and certain to £40; and also in all matters of tort respecting personal chattels, when the damages recovered shall not exceed £15, and the title to lands is not brought in question.

They commence their sittings on the Monday of the week in which the Quarter Sessions for the district commence, and end on the Saturday of the next week.—2 Howard, 16.

### *Court of Probate.*

This court is styled "The Court of Probate of the Province of Upper Canada," (8) and has full power and authority to issue process and hold cognizance of all matters relative to the granting of probates, and committing letters of administration; and also to grant probates of wills and commit letters of administration of the goods of persons dying intestate, having personal estates, rights, and credits within the province.

The person administering the government of the province presides in the court "to hear, give order, decree, or pronounce judgment in all questions, causes, or suits that may be brought before him relative to the matters aforesaid, and that for such purposes, he may from time to time, when he shall be so disposed, call such person or persons as he shall think proper to be assessor or assessors with him."—2 Howard, 16.

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(8) 33 Geo. 3, c. 8, L. C.

*Surrogate Courts.*

Each district of the province has also a Surrogate Court for the purpose of granting probates of wills and letters of administration of the goods of persons dying intestate, having personal estate within the limits of each district respectively. The surrogate is appointed by the Governor, but when the deceased leaves goods, chattels, or credits to the amount of £5 in any district other than where he usually resided at his decease, or when he leaves such *bonâ notabilia* in two or more districts, then the Court of Probate alone has jurisdiction over such property.

The Surrogate Courts for the several districts commence their sittings on the Monday of the week on which the sittings of the Quarter Sessions for the district commence, and end on the Saturday of the next week.—2 Howard, 16.

*Law Officers of the Crown.*

In Upper Canada the law officers of the Crown are an Attorney and Solicitor-General. In this province too there is an officer called a Reporter, but it is difficult to say whether his office is similar to that of a master of the Court of King's Bench in England, and he reports his opinion on cases referred to him by the court, or whether he performs the duty of an official reporter of the judgments of the court on cases argued before them, as was the practice during the time when the Year Books were published in England. The only mention of this officer which the author has been able to find is in the list of the judges and officers of the court contained in the Almanack.

*Justices of the Peace.*

The members of the council are justices of the peace throughout their respective provinces. There are also justices commissioned for each district in both Upper and Lower Canada.

*Barristers and Attornies.*

Persons called to the bar of any superior court (not having merely local jurisdiction) in England, Scotland, or Ireland, or in any British province in North America, in which the same privilege is extended to Upper Canada, on producing sufficient evidence thereof and of good character, to the satisfaction of the Law Society there, may be called to the bar. And no person is admissible to practise in the Court of King's Bench as an attorney, unless he have previously served under articles for five years with some practising attorney in the province.

*Ecclesiastical Establishments.*

The ecclesiastical establishment of the Canadas consists of the Lord Bishop of Quebec, who presides over the two provinces, and is assisted by an Archdeacon of Quebec, an Archdeacon of Kingston, and an Archdeacon of York.

## LAWS. (9)

The laws of Lower Canada are a mixture of the Acts of the British Parliament which extend to the colonies, and the laws of France as they existed at the conquest in 1759. The criminal law is the same as in England, and is administered in the same manner.

Both the civil and criminal laws of Upper Canada are the same as in England, and are administered in the same way and by the same functionaries.

The tenure upon which lands are held by the seigneurs or lords in Lower Canada is feudal; their undertenants hold of them somewhat in the way in which copyholds are held in England, paying a small annual rent and a fine upon alienations, and they are also subject to the payment of a twenty-sixth part of the grain raised, for the support of the clergy.—The Canadas as they now are, by a late Resident.

It is a general rule that in commissions and instructions to Governors, and in Orders of Council and Acts of Par-

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(9) See ante, p. 3 to 16, the remarks on the general topic how far the colonies are subject to the laws of the mother country.

liament, there should be a direction that the laws or ordinances passed in any colony should not be "repugnant to the laws of England, but as near as may be agreeable thereto." The peculiar circumstances of Lower Canada, where the great body of a large population had been accustomed and had become attached to other laws, required a departure from this rule, at least with respect to the tenure on which the inhabitants of that province held their lands. Several Acts of Parliament have been passed recognizing this exception to the general rule. (1) Upon these acts doubts have arisen, and for the especial purpose of quieting those doubts the act of 1 Wm. 4, c. 20, was passed. As that act recites the former acts and the doubts that have been entertained upon them, as it will be a sort of constitutional charter for the colony, and as it is not very lengthy, it has been thought advisable to insert it here. (2)

(1) See, on this subject, ante, 26, and note.

(2) 1 Wm. 4, c. 20.—An Act to explain and amend the Laws relating to Lands holden in Free and Common Soccage in the Province of Lower Canada.—30th March, 1831.

Whereas, by an act made in the thirty-first year of the reign of His Majesty King George the Third, intituled, An Act to repeal certain parts of an act passed in the fourteenth year of His Majesty's reign, intituled, "An Act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the province," it was, amongst other things, enacted, that in every case where lands should be thereafter granted within the province of Lower Canada, and where the grantee thereof should desire the same to be granted in free and common soccage, the same should be so granted, but subject, nevertheless, to such alterations, with respect to the nature and consequences of such tenure of free and common soccage, as might be established by any law or laws which might be made by His Majesty, his heirs or successors, by and with the advice and consent of his or their

Privy Council: And whereas, by an act passed in the sixth year of his late Majesty King George the Fourth, intituled, "An Act to provide for the extinction of feudal and signiorial rights and burdens on lands held à titre de fief, and à titre de cens, in the province of Lower Canada, and for the gradual conversion of those tenures into the tenure of free and common soccage, and for other purposes relating to the said province," after reciting that doubts had arisen whether lands granted in the said province of Lower Canada by his said late Majesty King George the Fourth, or by any of his royal predecessors, to be holden in free and common soccage, would be held by the owners thereof, or would subsequently pass to other persons according to the rules of descent and alienation in force in England, or according to such rules as were established by the ancient laws of the said province, for the descent and alienation of land situate therein, it was thereby declared and enacted, that all lands within the said province of Lower Canada which had theretofore been granted by his said late Majesty, his heirs, and successors, to any person or persons, their heirs or assigns, to be holden in free and

In the year 1774 the first act of the Provincial Legislature was passed, making provision for the better government of this part of the British dominions. By this act the English criminal law was preserved. But it was enacted "that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada for the rule and decision of the same, and all causes that should hereafter be instituted in every court of justice to be appointed within the province, should, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada." From this rule however it was excepted that it "should not apply to lands which had been or should be granted in free and common soccage."

By the constitutional act of 1791 it was provided, with respect to Lower Canada, that lands should be granted in free and common soccage, if so desired, but that such

common soccage, or which should or might thereafter be so granted by his said Majesty, his heirs, and successors, to any person or persons, their heirs, and assigns, held, granted, bargained, sold, aliened, conveyed, and disposed of, and might and should pass by descent, in such manner and form, and upon and under such rules and restrictions, as are by the law of England established and in force in reference to the grant, bargain, sale, alienation, conveyance, disposal, and descent of lands holden by the like tenure therein situate, or to the dower or other rights of married women in such lands, and not otherwise, any law, custom, or usage to the contrary in anywise notwithstanding; and it was thereby provided that nothing therein contained should extend to prevent His Majesty, with the advice and consent of the Legislative Council and Assembly of the said province of Lower Canada, from making and enacting any such laws or statutes as might be necessary for the better adapting the before mentioned rules of the law of England, or any of them, to the local circumstances of the said province of Lower Canada and the inhabitants thereof. And whereas doubts have arisen how far it is competent to His Majesty, with the advice and consent of the said Le-

gislative Council and Assembly, to make and enact any laws or statutes establishing rules respecting the descent of lands so granted in free and common soccage as aforesaid, or respecting the grant, bargain, sale, alienation, conveyance, or disposal of such lands, or respecting the dower or other rights of married women in or to such lands in any case wherein such rules are repugnant to or at variance with the laws of England; and it is expedient that such doubts should be removed: Be it therefore enacted, &c. that it shall and may be lawful for His Majesty, his heirs, and successors, to assent to, or to authorize his or their assent to be given to any bill or bills which have heretofore been or which may hereafter be passed by the said Legislative Council and Assembly, for regulating the descent, grant, bargain, sale, alienation, conveyance, or disposal of any lands which are now, or which may hereafter be holden in free and common soccage within the said province of Lower Canada, or for regulating the dower or other rights of married women in such lands, any repugnancy, or supposed repugnancy of any such regulations, to the law of England, or to any of the provisions in the before recited acts of Parliament or either of them contained to the contrary notwithstanding.

grants should be subject to such alterations, as to the nature and consequences of that tenure, as might be made by the Provincial Legislature with His Majesty's approbation.—Rep. Select Committee, House of Commons' Papers, 569.

A bill has also been passed to encourage emigration, by which foreigners may purchase and hold lands in this province, and convey the same in fee simple; and at the expiration of five years, having complied with certain conditions of registry, &c. and taking the oath of allegiance, shall be considered natural born subjects of His Majesty, and be admitted to all the privileges of subjects, with the right, under the provincial statutes, of voting at elections and being returned to serve in the Provincial Parliament, after having completed a residence of seven years in the province.

This bill is one of those reserved for His Majesty's pleasure.—Quebec Mercury, March 31st, 1829.

The author has not been able to learn whether this bill has been assented to, but most probably it has, for there is nothing in it which cannot be justified by the precedents of acts in other colonies. (See the Colonial Acts of Jamaica, 35 Charles 2, c. 3, and of Antigua, 1 Anne, 28th June, 1702.) Indeed, but for the purpose of fixing the period of naturalization at the end of five years' residence in the colony, there would have been no necessity for this colonial act, for by the act 13 Geo. 2, c. 7, foreigners living seven years in any of the British colonies in America, and who shall not have been absent therefrom more than two months at any one time, are to be deemed natives upon taking certain oaths therein mentioned in open court before the judges of the colony where they reside. By the act of 1 Wm. 4, sess. 1, c. 54, (1830,) it is now provided that all persons naturalized by any act of the Legislative Council and Assembly of the province of Lower Canada, assented to by His Majesty, his heirs or successors, shall henceforth be deemed competent in the law to be summoned to the Legislative Council of the said province of Lower Canada, and to vote at the election of members to serve in the Legislative Assembly of the said province, and to be elected at any such election. Such bill of naturalization in the province must be reserved for His Majesty's pleasure, and cannot be assented to by the Governor.

## NEW BRUNSWICK.

THIS province formerly constituted part of Nova Scotia. (See the account of that colony, post.) In 1784 it was erected into a distinct province, and a royal charter of constitution was granted to it. In accordance with this charter it is now governed by a Governor, a Council, and a House of Assembly.

The Council of New Brunswick consists of eleven members, the Chief Justice of the province being the president, and the Lord Bishop of Nova Scotia having a seat next to him in right of his office. The House of Assembly consists of twenty-eight members.

### COURTS.

The courts are, the Court of Chancery, of which the Governor is chancellor. The Supreme Court is composed of one chief justice and three puisne justices.

There is a court of the Governor and Council for hearing and determining causes relating to marriage and divorce. The Governor is the president of the court, one of the puisne justices of the supreme court is the vice-president, and all the council are members.

There is a Court of Vice Admiralty, and a court for the trial of piracy and offences upon the high seas. The latter court is composed of the chief justice and the judges of the Supreme Court; the former is presided over by a commissioner.

There is a court for the probate of wills and granting of administrations. The clerk of the crown in Chancery is the registrar of this court.—New Brunswick Almanack for 1833.

The salary of the chief justice is £750, that of the assistant justices £500 each. There is a Court of Common Pleas in each county of the province. Debts under £5 are recovered before magistrates, who also take cognizance of breaches of the peace. The laws of England, and the local laws enacted in the Assembly, prevail in the province.



*Registration of Deeds and Wills.*

26 Geo. 3, c. 3. An Act for the Public Registering of all Deeds, Conveyances, and Wills, and other incumbrances which shall be made of, or that may affect any Lands, Tenements, or Hereditaments within this Province.

Sect. 1. Deeds and wills affecting lands to be registered at length, or (as to deeds) to be void against subsequent purchaser or mortgagee, whose deeds are first registered, and as to wills to be void.

52 Geo. 3, c. 20. An Act supplementary to the Acts(1) now in force for the Public Registering of Deeds, Conveyances, Wills, or other Incumbrances of, or which may affect any Lands, Tenements, or Hereditaments within this Province, and for the more effectually securing the Title of Purchasers of Real Estates against Claims of Dower.

Sect. 1. If grantor in deed of land live in a foreign state, the acknowledgment of proof thereof may be had before a British envoy there, and certified thereon under his hand and seal; or if in the United Kingdom, before a chief magistrate of, and certified under the seal of a city, borough, or town corporate, or the seal of office of such chief magistrate. Such acknowledgments or proofs to be registered with the deeds, pursuant to 26 Geo. 3, c. 3.

2. Deeds acknowledged or proved before any court or person heretofore or hereby authorized to take the same, and duly registered, deemed effectual without livery of seisin or other ceremony.

*Wills.*

26 Geo. 3, c. 11. An Act relating to Wills, Legacies, Executors, and Administrators, and for the settlement and distribution of the Estates of Intestates.

Sect. 1. Devises to be signed by devisor, or in his presence and by his directions, and attested by three witnesses.

2. Devise revocable only by another will or other writing, signed before three witnesses declaring same, or by destruction of the first will.

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(1) 26 Geo. 3, c. 3; 27 Geo. 3, c. 9; 32 Geo. 3, c. 2; 33 Geo. 3, c. 5.

3. Nuncupative will of above £30 bad, unless proved by oath of three witnesses, and testator bid persons present witness same, and unless same be made in last illness of deceased, and where he dwelt for ten days before, except he be ill from home and die there.

4. After six months from speaking such will, no proof thereof to be received, unless put in writing in six days.

5. No probate of nuncupative will to be granted till fourteen days after testator's death, nor till widow or next of kin cited.

### *Debts.*

26 Geo. 3, c. 12. An Act subjecting Real Estates in the Province of New Brunswick to the Payment of Debts, and directing the Sheriff in his proceedings thereon.

Sect. 1. Real estate liable for owners' debts, and made chattels for that purpose.

26 Geo. 3, c. 13. An Act for relief against Absconding Debtors.

Sect. 1. Where debtor absconds or conceals himself, his creditors may prove same on oath before judge of Supreme Court, who may issue warrant to the sheriff to attach and keep the debtor's estate; such sheriff with two freeholders to make inventory of such estate, and return same to the judge. Made perpetual by 47 Geo. 3, c. 15.

### *Frauds and Perjuries.*

26 Geo. 3, c. 14. An Act for prevention of Frauds and Perjuries, for prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury and subornation of perjury.

Sect. 1. All estates and interests in land not in writing, and signed by the parties making the same, or their agents authorized in writing, to be estates at will only.

2. Except leases for terms not exceeding three years, at rack rent.

12. Judgments as against purchasers to be such only from signing thereof.

13. Executions to bind personal estate from delivery thereof to the sheriff, who must indorse thereon such time of delivery.

*Rate of Interest.*

26 Geo. 3, c. 17. An Act for establishing the Rate of Interest.

The legal rate of interest to be £6 per cent. per annum, and all securities reserving more to be void.

*Absent Proprietors.*

26 Geo. 3, c. 40. An Act to oblige Absent Proprietors to pay a Proportion of any Public Charge, and to repair Highways.

Sect. 1. Every proprietor of land to pay his quota of county rates, and do his proportion of county labour.

2. If any such proprietor be absent, and no person appear for him in six months after public notice to pay, or do his quota of rates or labour, and he have no sufficient distress, any three justices of the peace, *quorum unus*, may let sufficient of his lands for the purpose; or if no lessee can be had, may order sheriff to sell the same at auction, who may execute proper conveyances to the purchaser, and put him in possession.

A similar power is vested by 26 Geo. 3, c. 45, in the commissioners of sewers.

*Dower.*

27 Geo. 3, c. 9. An Act for more effectually securing the Title of Purchasers of Real Estates against claims for Dower.

Deed to bar a married woman of dower must be by her executed, and she must be examined touching her free-will therein by one of the Council, or a judge of the Supreme Court, or of an inferior Court of Common Pleas in the province; and such examination indorsed on and registered with such deed.

32 Geo. 3, c. 2. An Act in amendment of an Act, (27 Geo. 3, c. 9,) intituled "An Act for more effectually securing the Title of Purchasers of Real Estates against claims of Dower," and also to enable *femes covert* more easily to convey any real estate they may hold in their own right.

Sect. 1. Married woman absentee may acknowledge deed to bar dower, if in the United Kingdom, before a judge of King's Bench, or Common Pleas, or Exche-

quer, or Master in Chancery, or Judge or Lord of Council or Session in Scotland, and if in any other British dominion, before a judge of the Supreme Court of Judicature; such acknowledgment to be certified thereon, and certificate to be authenticated, if in the British plantations, under the hand and seal of the Governor there, and if in the United Kingdom by an affidavit, certified under the seal of some corporation there; and absentee may acknowledge such deed before a British envoy abroad; same to be certified thereon under his hand and seal.

2. The acknowledgment of deeds made by married women of their land in the province may be taken and certified in like manner as deeds to bar them of dower.

33 Geo. 3, c. 5. An Act in amendment of an Act, intituled "An Act for more effectually securing the Title of Purchasers of Real Estate against claims of Dower."

The acknowledgment by a married woman of any deed wherein the consideration-money does not exceed £200, may be made before a justice of the peace in New Brunswick, or the registrar of deeds in the county where the premises lie.

#### *Absconding Debtors.*

28 Geo. 3, c. 2. An Act in an addition to an Act, intituled "An Act for relief against Absconding Debtors."

Sect. 1. All real and personal estate of persons indebted in 40s. departing from New Brunswick, may be proceeded against according to 26 Geo. 3, c. 13. Applicant for such process must prove that debtor left the province after debt incurred, and has not resided therein for six months previous to such application, and no trustees may be appointed till six months after public notice given according to such act. Made perpetual by 47 Geo. 3, c. 15.

#### *Laws of the Province.*

31 Geo. 3, c. 2. An Act to declare that no Act passed in the General Assembly of the Province of Nova Scotia before the erection of the Province of New Brunswick, shall be of force in this province.

No law of Nova Scotia made before the erection of the Province of New Brunswick to be in force in New Brunswick.

This act not to have a retrospective operation.

*Estates Tail.*

36 Geo. 3, c. 4. An Act for preventing unnecessary expense and delay in the process of barring Entails, and for establishing a plain and easy form of conveying and assuring Estates Tail.

Sect. 1. Tenant in tail of land, the reversion whereof is not in the crown, may by deed duly made, authenticated, and registered, bar the entail, and such deed having words sufficient to pass a fee, shall have the same operation as if the maker had levied a fine with proclamations or suffered a recovery.

2. In conveyances of estates tail by a feme covert, the acknowledgment thereof, and her examination, must be taken and certified according to 27 Geo. 3, c. 9, or 32 Geo. 3, c. 2, (see ante, 415.)

*Insolvent Debtors.*

47 Geo. 3, c. 2. An Act for the further relief of Debtors with respect to the Imprisonment of their Persons.

Sect. 1. Any creditor or his executor may declare his consent to the discharge of his debtor in execution, without prejudicing his right against such debtor's estate, and such debtor shall never after be taken in execution on such judgment, or in any action thereon.

## NEWFOUNDLAND.

NEWFOUNDLAND is a large island of North America, lying between the  $46^{\circ}$  and  $51^{\circ}$  of north latitude, and  $53^{\circ}$  and  $58^{\circ}$  of west longitude. The form is that of an irregular triangle, the base, or south side, being 80 leagues in extent, the east side is the longest, the whole circumference being about 150 leagues. It is bounded on the north by the Straits of Belleisle, which separate it from Labrador, on the east and south by the Atlantic Ocean, and on the west by the Gulf of St. Lawrence. The climate is rather severe, and the soil on the sea coast not fertile. The country within land is mountainous, and abounds with timber. There are several rivers, which are plentifully stored with fish, and the island possesses besides abundance of deep bays and many good ports.—Ency. Brit.

Newfoundland, like other new-discovered lands in America, was endeavoured to be settled and improved by means of charters granted by the crown. Such charters were granted at five different times. The first was in 1578 to Sir Humphrey Gilbert, who had thereby full power given him to possess all lands in Newfoundland not in actual possession of any Christian prince. By virtue of this authority, he in 1583 landed in St. John's Bay, and, we are told, that calling the English and strangers, then fishing, together, he took possession of the country in the Queen's name, and erected the arms of England upon a pillar of wood, in testimony of her Majesty's sovereignty.

The second charter was granted in 1610 by James I. to the Earl of Northampton, Sir Francis Bacon, and several others, by name of the Treasurer and Company of Adventurers and Planters of the Cities of London and Bristol for the Colony of Newfoundland.

Two other charters were granted in like manner, the first to Sir George Calvert of a tract of land, called the Province of Avalon, and the second, to the Marquis of

Hamilton, Earl of Pembroke, Earl of Holland, Sir David Kirk, and others; and under the pretence that Lord Baltimore, the heir of Sir George Calvert, had deserted the plantation, this grant included the province of Avalon, (see post, *n.* (3), p. 422.) In these grants the free liberty of fishing, salting and drying of fish, was expressly secured to the English in general.

In 1615 Captain Richard Whitburne was sent out with a commission from the High Court of Admiralty, authorizing him to impanel juries, and to make inquiry upon oath of sundry abuses and disorders committed every year among the fishermen on that coast.

On the 20th of February, 1633, a fifth charter was granted by the Star Chamber to the merchants and traders of Newfoundland, laying down certain rules respecting the management of the fishery.

In 1650 the Council of State gave to John Treworgay, a merchant, who was then in the island, a commission to order affairs there for the best advantage of the state.

After the Restoration, Lord Baltimore obtained orders in 1660 for the restitution of the province of Avalon.

Some application seems to have been made to the government for a Governor for the colony, for in 1667 petitions from Totness, Plymouth, and Dartmouth, all of which were engaged in the Newfoundland fishery, were received against such an appointment, and the petitioners alleged the inability of the colony to support such an expense. These petitions were supported by evidence. The objections of the petitioners were adopted, but in order to regulate the affairs of the colony, it was recommended by the gentlemen, to whom the petitions had been referred by his Majesty, that a chaplain should be sent out in the convoy ships, and that the captains of the said ships should have power to regulate abuses there. "Additional rules" were afterwards passed in the council for the purpose of the regulation of the colony, and finally it was ordered, that a bill should be prepared to pass the great seal, for the confirmation of the last charter with these additional powers, and that Mr. Attorney-General should present to the board some way of judicature for the determining of causes in Newfoundland. A special report was afterwards made on the subject of sending out a Governor and founding a colony, and the project was discouraged chiefly on the ground that the colonists would get their wants supplied from

New England instead of from home; and their lordships therefore proposed, "that all plantations in Newfoundland should be discouraged, and in order thereunto, that the commander of the convoy should have commission to declare to all the planters to come voluntarily away, or else that the western charter should from time to time be put into execution, by which all planters were forbid to inhabit within six miles from shore, from Cape Race to Cape Bonavista." This report from the Lords of the Council was approved of by his Majesty.

Sir John Berry was sent out as commander of the convoy. He was specially directed to lay before the council the state of Newfoundland as he found it with reference to the planters and the western adventurers. He did so, and that account directly contradicted all the statements made by the western adventurers, on which the above report had been founded. The question of the foundation of a colony was again discussed in 1696. The interest of the western adventurers under the charter was still in a great degree predominant. In 1698 (10 and 11 Wm. 3, c. 25,) was passed the first act of Parliament on the subject, entitled "An Act to encourage the trade to Newfoundland," but in that act the policy of former times seems to have been too blindly followed.—Reeve's Hist. Newfoundland, 1 to 31.

After the peace of Utrecht the condition of Newfoundland became the subject of frequent and earnest discussion, and finally in 1728 a commission was issued to Captain Henry Osborne, revoking so much of the commission to the Governor of Nova Scotia as related to the government of any of the forts in Newfoundland; and it went on to appoint Henry Osborne Governor and Commander-in-chief in and over our said island of Newfoundland, our fort and garrison at Placentia, and all other forts and garrisons erected or to be erected in that island. It then gave him authority to administer oaths, to appoint justices of the peace, with other necessary officers and ministers for the better administration of justice and keeping the peace and quiet of the island.—Reeve's Hist. 32 to 75.

In 1730, it seems, that under the authority of this commission Captain Osborne claimed a right, by the means of the justices of the peace whom he had appointed, to impose upon the inhabitants a tax for the purpose of building a prison. This attempt was resisted, and a case



was laid before Mr. Attorney-General Yorke, in which the commission was stated, and his opinion desired upon it. The Attorney-General(1) reported as follows:—

“I have considered the said quæries, and upon the first thereof do conceive that the justices of the peace had not sufficient authority to raise money for building a prison, by laying a tax upon fish caught, or upon fishing boats, the rather because the act of the 10 and 11 Wm. 3, for encouraging the trade to Newfoundland, directs that it shall be a free trade.

“As the justices of the peace in Newfoundland are, by their commissions, to act according to the laws of England, I apprehend they ought to have pursued this act of Parliament as near as the circumstances of the case would admit.

“Neither Captain Osborne nor the justices of the peace have power to raise any tax for repairing churches, or any other public works, except such works for which power is given to justices of the peace in England to levy money by particular acts of Parliament.”

The exercise of the new Governor's authority was also opposed by the western adventurers, who by themselves and their fishing admirals thwarted every measure that was projected. The opinion of the Attorney-General Yorke was taken on the question, how far the commission of Captain Osborne had the effect of superseding the jurisdiction formerly exercised by the fishing admirals, and he reported his opinion in favour of the powers granted to Captain Osborne, whose authority was thus declared to be legally established.

Nothing material appears respecting the civil government of Newfoundland till the year 1737, when the Board of Trade listened to the representation that had frequently been made by the Governor, of the inconvenience of sending over to England for trial persons who had committed capital felonies. The board prepared a commission to Captain Vanbrugh, containing a clause authorizing him to appoint commissioners of oyer and terminer, but the Privy Council, when the commission came before them, struck out this authority. In 1750, when Captain Rodney was Governor, he pressed the Secretary of State for such a power to be granted. The Board of Trade thought the matter might be managed by an in-

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(1) 2 Chal. Opin. 232.

struction to the Governor, but on consulting Sir Dudley Ryder, he declared that such a power could not be granted otherwise than under the great seal, (2) though the manner of exercising it might be prescribed by instruction, but that the power of trying or of pardoning treason ought not to be entrusted to the Governor, or to any court erected by him. A commission, prepared on the authority of this opinion, was accordingly issued to Captain Francis William Drake in April, 1750. In the year 1754 Lord Baltimore claimed to be put in possession of a large tract of land in the island, by the name of the Province of Avalon, and of all the royal jurisdictions and prerogatives thereto belonging, and that His Majesty would approve of John Bradstreet, Esq. as Governor thereof. This claim was referred by the Board of Trade to the Attorney and Solicitor-General, who, in May, 1734, reported decidedly against allowing it. (3) The question whether Newfoundland was one of the plantations, and, as such, subject to the navigation laws, was afterwards formally discussed and decided in the affirmative, upon the seizure of a ship there for want of being provided with a certificate of registry. This discussion, at such a period, is somewhat curious, since custom-house officers had long before been appointed; and among the books sent out by the Board of Trade with the first Governor Osborne in 1729, was a bundle containing the acts relating to the trade and navigation of this kingdom (4) The coast of Labrador was, by proclamation in 1763, annexed to the island of Newfoundland, but separated from it, and annexed to Canada by the Quebec Act, 14 Geo. 3, c. 83.

In the year 1765 a Court of Vice-Admiralty was first placed at St. John's.

The first statute framed to establish, according to English forms, a regular court of civil justice, was passed in the year 1790—1791. It was only to continue for one

(2) 2 Chal. Opin. 241.

(3) The question had already been decided in the case of New Hampshire, where lands originally granted on condition of being settled and planted, were resumed by the crown on the non performance of the condition. Attorney and Solicitor-General Ryder and Murray reported (1 Chal. Opin. 150,) that they were clearly of opinion that the crown might resume the lands granted on condition of

settling in three years, where there had in fact been no settlement. Mr. West had in 1723, in like manner reported, that "it was a maxim of law that a title to the possession of lands in the colonies must necessarily be supported by an actual culture and planting, and that consequently the neglect of the one would extinguish the other." 2 Chal. Opin. 44.

(4) Reeve's Hist. 73.

year. After the end of that period another act in 1792 was proposed, making some alterations in the method prescribed by the former act. This latter statute was also to continue only for one year. Other statutes were afterwards passed, but that under which Newfoundland is at present governed, is the 5 Geo. 4, c. 67, under the authority of which its present charter of justice has been issued. (See ante, p. 22, n. (7).)

As Newfoundland has now received the grant of a Legislative Assembly, (see ante, pp. 22 and 80,) and as the instructions and proclamation under which it is convened may be of importance in ascertaining its powers, and those of the Governor with relation to the courts established by the Charter of Justice, it has been deemed advisable to present them in this book. They will be found at the conclusion of the following Charter of Justice.

#### CHARTER OF JUSTICE.

GEORGE the FOURTH, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and so forth. To all to whom these presents shall come, greeting: Whereas by an Act of Parliament passed in the fifth year of our reign, intituled "An Act for the better administration of Justice in Newfoundland, and for other purposes," it is (amongst other things) enacted, that it shall and may be lawful for us by our charter or letters-patent under the great seal to institute a superior court of judicature in Newfoundland, which shall be called "The Supreme Court of Newfoundland." And it is thereby further enacted, that the said Supreme Court shall be holden by a Chief Judge and two Assistant Judges, being respectively barristers in England or Ireland of at least three years standing, or in some of our colonies or plantations. And it is thereby further enacted, that it shall and may be lawful for us by any such charter or letters-patent as aforesaid to institute Circuit Courts in each of the three districts in which the said colony may be so divided as in the said act mentioned. And it is thereby further enacted, that it shall be lawful for us, our heirs and successors, by such charter or letters-patent as aforesaid, or by any order or orders to be thereafter issued by and with the advice of our or their Privy Council, to make and prescribe, or to authorize and empower the said Supreme Court of Newfoundland, under such limitations as we shall deem proper, to make and prescribe such rules and orders touching and concerning the forms and manner of proceeding in

the said Supreme Court and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought; or touching or concerning the appointing of commissioners to take bail and examine witnesses; the taking examinations of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the sheriff and his deputies, and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanors in the said Circuit Courts; the process of the said court, and the mode of executing the same; the empannelling of juries; the admission of barristers, attornies, and solicitors; the fees, poundage, or perquisites to be lawfully demanded by any officer, attorney, or solicitor in the said courts respectively; and all other matters and things whatsoever touching the practice of the said courts as to us, our heirs and successors, shall seem meet for the proper conduct of business in the said courts; and such rules and orders from time to time to alter, amend, or revoke, as to us, our heirs and successors shall seem requisite. And it is thereby further enacted, that it shall and may be lawful for us by our said charter or letters-patent to allow any person or persons feeling aggrieved by any judgment, decree, order, or sentence of the said Supreme Court, to appeal therefrom to us in council in such manner, within such time, and under and subject to such rules, regulations, and limitations as we by such charter or letters-patent shall appoint and direct. Now KNOW YE, that we, upon full consideration of the premises and of our especial grace, certain knowledge, and mere motion, have, in pursuance and by virtue of the said Act of Parliament, thought fit to grant, direct, and appoint, and by these presents do accordingly grant, direct, and appoint, that there shall be within our said colony of Newfoundland a court, which shall be called "The Supreme Court of Newfoundland." And we do hereby create, erect, and constitute the said Supreme Court of Newfoundland to be a Court of Record, and do direct and appoint that the same shall be composed of and holden by one Chief Judge and two Assistant Judges. And we do hereby give and grant to our said Chief Judge rank and precedence above and before all our subjects whomsoever within the colony of Newfoundland aforesaid, and the islands, territories, and places dependent thereupon, excepting the Governor or acting Governor for the time being of the said colony, and excepting all such persons as by law or usage take place in England before our Chief Justice of our Court of King's Bench. And we do hereby give and grant to our said Assistant Judges rank and precedence within our said colony, and the islands, territories, and places dependent thereupon, next after our said Chief Judge, the said Assistant Judges taking precedence between themselves according to the priority of their respective appointments to

the said office, or where they may be both appointed at the same time, then according to their seniority as barristers. And we do further grant, ordain, and appoint, that the said Supreme Court of Newfoundland shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms within an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of Newfoundland." And we do hereby grant, ordain, and appoint, that the said seal shall be delivered to and kept in the custody of the said Chief Judge. And we do further grant, ordain, and declare, that the said Chief Judge and Assistant Judges, so long as they shall hold their respective offices, shall be entitled to have and receive the following salaries, that is to say, our said Chief Judge a salary of £1200 sterling money by the year, and each of our said Assistant Judges a salary of £700 like sterling money by the year. And our Governor or acting Governor for the time being of the said colony is hereby directed and required to cause such salary to be paid to the said Chief Judge and Assistant Judges out of the revenue of the said colony, by four quarterly payments at the four most usual days of payment in the year. And we do further grant, ordain, and declare, that the said salary shall commence and take place in respect to any person who shall be resident in Great Britain or Ireland at the time of his appointment, upon and from the day on which any such person shall thereupon embark or depart from Great Britain or Ireland for Newfoundland to take upon him the execution of the said office; and that the salary of any such Chief Judge or Assistant Judge, who shall at the time of his appointment be resident in Newfoundland aforesaid, shall commence and take place from and after his taking upon him the execution of such his office, and that such salary shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantage whatsoever, other than and except the said salary, shall be accepted, received, or taken by such Chief Judge or Assistant Judges in any manner or on any account or pretence whatsoever. Provided nevertheless, that it shall be lawful for the said Chief Judge or Assistant Judges to occupy and inhabit any official house or residence within the said colony of Newfoundland, which hath been or may hereafter be provided for their or any of their residence and occupation without paying to us, our heirs and successors, any rent for the same, and without being obliged to repair, uphold, or maintain any such house or official residence at his own costs and charges. And we do further grant, appoint, and declare, that no Chief Judge or Assistant Judge of the said Supreme Court of Newfoundland shall be capable of accepting, taking, or performing any other office or place of profit or emolument, on pain that the acceptance of any such other office or place as aforesaid shall be, and be deemed

in law *de facto* an avoidance of the office of such Chief Judge or Assistant Judge as the case may be, and the salary thereof shall cease and be deemed to have ceased accordingly from the time of such acceptance of any such other office or place. And we do hereby constitute and appoint our trusty and well beloved Richard Alexander Tucker, Esquire, to be the first Chief Judge of the said Supreme Court of Newfoundland, the said Richard Alexander Tucker being a barrister in England of three years standing and upwards. And we do hereby constitute and appoint our trusty and well beloved Augustus Wallet Des Barres, and John William Molloy, Esquires, to be the first Assistant Judges of the said Supreme Court, the said Augustus Wallet Des Barres and John William Molloy being respectively barristers of three years standing and upwards. And we do hereby grant, direct, and appoint, that there shall be within our said colony of Newfoundland three Circuit Courts, to be held in each of the three districts into which the said colony may be divided in pursuance of the said Act of Parliament. And we do hereby erect, create, and constitute the said Circuit Courts respectively to be Courts of Record, and do direct and appoint that each of the said Circuit Courts shall be holden by the Chief Judge or one of the Assistant Judges of the Supreme Court of Newfoundland aforesaid. And we do direct and appoint, that the Chief Judge of the said Supreme Court shall be always at liberty to decide which of the three Circuit Courts shall be holden by him, and that the senior Assistant Judge shall be always at liberty to decide which of the two remaining Circuit Courts shall be holden by him. And we do hereby ordain, appoint, and declare, that there shall be and belong to the said Supreme Court and Circuit Courts respectively such and so many officers as to the Chief Judge of the said Supreme Court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of all the powers and authorities which are granted and committed to the said Supreme Court and Circuit Courts respectively by the said Act of Parliament or by these our letters-patent. Provided nevertheless, that no office shall be created in the said courts or any of them, unless the Governor or acting Governor for the time being of our said colony shall first signify his approbation thereof to our said Chief Judge for the time being, in writing under the hand of such Governor or acting Governor as aforesaid. And we do further ordain and direct, that all persons who shall and may be appointed to the several offices of Master, Registrar, Accountant-General, or Prothonotary of the said Supreme Court or Circuit Courts in Newfoundland, or to any office in the said courts or any of them, whereof the duties shall correspond to those performed by the Master, Registrar, Accountant-General, or Prothonotary of any or either of our Courts of Record at Westminster shall be so appointed by our heirs and succes-

sors by warrant under our or their royal sign manual to hold such their offices during our or their pleasure; and that all persons who shall and may be appointed to any other office within the said Supreme Court of Newfoundland, or within the said Circuit Courts of Newfoundland, shall be so appointed by the Chief Judge for the time being of the said Supreme Court, and shall be subject and liable to be removed from such their offices by the said Chief Judge upon reasonable and sufficient cause. And we do hereby authorize and empower the said Supreme Court of Newfoundland to approve, admit, and enrol such and so many persons having been admitted barristers at law or advocates in Great Britain or Ireland, or having been admitted writers, attornies, or solicitors in one of our Courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any Ecclesiastical Court in England, to act as well in the character of barristers and advocates as proctors, attornies, and solicitors in the said Supreme Court of Newfoundland; and which persons so approved, admitted, and enrolled as aforesaid, shall be and are hereby authorized to appear and plead and act for the suitors of the said Supreme Court, subject always to be removed by the said Supreme Court from their station therein upon reasonable cause. And we do further authorize the said Supreme Court of Newfoundland to admit and enrol as barristers, advocates, proctors, attornies, or solicitors therein, such and so many persons as may have served a clerkship under articles in writing for the term of five years at the least to any barrister, advocate, proctor, attorney, or solicitor of the Supreme Court aforesaid. And we do declare, that no person or persons other than the persons aforesaid shall be allowed to appear, plead, or act in the said Supreme Court of Newfoundland for or on behalf of the suitors of the said court or any of them. Provided always and we do ordain and declare, that in case there shall not be a sufficient number of such barristers at law, advocates, writers, attornies, solicitors, and proctors, or of persons so admitted and enrolled as aforesaid to act as such within the said colony competent and willing to appear and act for the suitors of the said Supreme Court, then and in that case the said Supreme Court of Newfoundland shall and is hereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attornies, and solicitors as may be necessary, according to such general rules and qualifications as the said Supreme Court shall for that purpose make and establish. And we do hereby authorize the said Supreme Court to make and prescribe such rules and orders as to them may seem expedient and necessary with regard to the admission of persons to practise the law, and appear and act in the character of barristers and advocates, proctors, attornies, and solicitors in the said Circuit Courts respectively. And we do hereby ordain and declare, that the Governor or acting Governor for the time being of the said colony of New-

foundland shall yearly, on the Monday next following the first day of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as and be the Sheriff for our said colony of Newfoundland and its dependencies, (other than and except the coast of Labrador,) for the year ensuing, which Sheriff, when appointed, shall as soon as conveniently may be, and before he shall enter upon his said office, take before the Governor or acting Governor of our said colony, an oath faithfully and impartially to execute the duties of such his office; and such Sheriff shall continue in such his office during the space of one whole year, to be computed from the said Monday next following the first day of January in each year, and until another Sheriff shall be appointed and sworn into the said office; and in case any such Sheriff shall die in his said office, or depart from our said colony of Newfoundland and its dependencies, then and in such case another person shall, as soon as conveniently may be after the death or departure of such Sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office. And we do further direct and appoint, that it shall and may be lawful for the Governor or acting Governor of our said colony to renew from year to year the appointment of the same person as Sheriff for our said colony and its dependencies; and that in selecting the person to be appointed to the execution and discharge of the said office, the said Governor or acting Governor shall conform to such written instructions or commands as may from time to time be signified by us, our heirs or successors, to him through one of our or their Principal Secretaries of State. And we do further direct, that before entering upon the execution of the duties of his said office, the said sheriff shall enter into a recognizance to us in the said Supreme Court of Newfoundland in the sum of £5000, with two good and sufficient sureties in the sum of £2000 each, for the due and faithful performance of the duties of such his office, and for the due and punctual payment of all such sums of money as may by him or his lawful deputies be levied or received by virtue of any process, rule, or order of the said Supreme Court and Circuit Courts or any of them. And we do further direct, that the said Sheriff shall, on the first Monday of each calendar month, produce before the Chief Judge or one of the Assistant Judges aforesaid, a written account of all the money by him or by his lawful deputies received during the calendar month last preceding, and stating the application thereof so far as the same may by him or them have been applied; and also stating the exact balance of such monies then remaining in the possession of himself or his said deputies, so far as the returns received from such deputies enable him to make out the said account. And we do further order, that the said Chief Judge or Assist-



ant Judges, as the case may be, shall cause the said account to be publicly exhibited in the office of the Prothonotary or Registrar of the said Supreme Court for the space of one calendar month next after the same shall have been so rendered, and shall then cause the same to be enrolled among the records of the said court. And we do further order, direct, and appoint, that the said Sheriff and his successors shall by themselves or their sufficient deputies, to be by them appointed and duly authorized under their respective hands and seals, and for whom he and they shall be responsible during his or their continuance in such office, execute, and the said Sheriff by himself or his lawful deputies is hereby authorized to execute, the writs, summonses, rules, orders, warrants, commands, and process of the said Supreme Court and the said Circuit Courts, and make returns of the same, together with the manner of the execution thereof, to the Supreme Court and Circuit Courts respectively; to receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the said Supreme Court and Circuit Courts respectively, or by the Chief Judge or Assistant Judges or either of them. And we do further direct, order, and appoint, that whenever the said Supreme Court or any of the said Circuit Courts shall direct or award any process against the said Sheriff, or shall award any process in any cause, matter, or thing wherein the said Sheriff, on account of his being related to the parties or any of them, or by reason of any good cause of challenge, which would be allowed against any Sheriff in England, cannot or ought not by law to execute the same, then and in every such case the said Supreme Court or the said Circuit Court, as the case may be, shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the person so to be named for that purpose, and the cause of such special process shall be suggested and entered on the records of the court issuing the same. Provided always and we do hereby ordain and declare, that the said Supreme Court and the said Circuit Court shall respectively fix certain limits, beyond which the said Sheriff shall not be compelled or compellable to go in person, or by his officers or deputies, for the execution of any process of the said courts respectively; and upon occasions where the process of any of the said courts shall be to be executed in any place or places beyond the limits so to be fixed, we grant, ordain, and direct, that the said Supreme Court or Circuit Courts respectively, as the case may be, shall, upon motion, direct by what person or persons, and in what manner, such process shall be executed, and the terms and condition which the party at whose instance the same shall be issued shall enter into, in order to prevent any improper use or abuse of the process of the said courts; and the said Sheriff shall, and he is hereby required to grant his special warrant or deputation to such person or persons as

the court making any such order shall direct, for the execution of such process; and in that case we direct and declare, that the said Sheriff, his heirs, executors, or administrators, shall not be responsible or liable for any act to be done in or in any way respecting the execution of such process, under and by virtue of such special warrant; and that any person or persons being aggrieved under or by virtue of such special warrant, shall and may seek their remedy under any security which may have been directed to be taken upon the occasion, and which the court issuing such process is hereby authorized to direct to be taken. And it is our further will and pleasure, and we do hereby for us, our heirs and successors, grant, ordain, establish, and appoint, that the said Supreme Court shall grant Probates under the seal of the said court, of the last wills and testaments of all or any of the inhabitants of the said colony and its dependencies, and of all other persons who shall die and leave personal effects within the said colony and its dependencies, and to commit letters of administration under the seal of the said Supreme Court, of the goods, chattels, credits, and all other effects whatsoever of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within the said colony and its dependencies, or where the executor being duly cited shall not appear and sue forth such probate, annexing the will to the said letters of administration when such persons shall have left a will, and to sequester the goods, chattels, credits, and other effects whatsoever of such persons so dying, in cases allowed by law, as the same is and may be now used in the diocese of London; and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject, the accounts of them in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf. Provided always, and we do hereby authorize and require the said Supreme Court in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same. And we do hereby further authorize and require the said Supreme Court of Newfoundland to grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, being then resident within the jurisdiction of the said Supreme Court, and being of the age of twenty-one years. Provided always, that probates of wills and letters of administration to be granted by the said Supreme Court shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the said colony and its dependencies. And we do hereby further enjoin and require that every person to whom such

letters of administration shall be committed shall before the granting thereof give sufficient security, by bond to be entered into, to us, our heirs, and successors, for the payment of a competent sum of money, with one, two, or more able sureties, respect being had in the sum therein to be contained and in the ability of the sureties to the value of the estates, credits, and effects of the deceased, which bond shall be deposited in the said Supreme Court among the records thereof and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said Supreme Court, and the condition of the said bond shall be to the following effect—"That if the above bounden administrator of the goods, chattels, and effects of the deceased do make or cause to be made a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased which have or shall come to the hands, possession, or knowledge of him the said administrator, or to the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the said Supreme Court of Newfoundland at or before a day therein to be specified, and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death or which at any time afterwards shall come to the hands or possession of such administrator or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make or cause to be made a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time, as he, she or they shall be lawfully required, and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said Supreme Court of Newfoundland, shall and do pay and dispose of in a due course of administration or in such manner as the said court shall direct, then this obligation to be void and of none effect, or else to be and remain in full force and virtue." And in case it shall be necessary to put the said bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said Court to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit or any part thereof, such person or persons shall by order of the said Supreme Court be allowed to sue the same in the name of the Attorney-General for the time being of the said colony, and the said bond shall not be sued in any other manner. And we do hereby authorize and empower the said Supreme Court to order that the said bond shall be put in suit in the name of the said Attorney-General. And we further will, order, and require that the said

Supreme Court shall fix certain periods when all persons to whom probates of wills and letters of administration shall be granted by the said Supreme Court shall, from time to time, until the effects of the deceased person shall be fully administered, pass their accounts relating thereto before the said court, and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said court, then, or at any earlier time, if the said Supreme Court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted, shall pay, deposit, and dispose of the balance of money belonging to the estate of the deceased then in his, or her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, in such manner and unto such persons as the said Supreme Court shall direct for safe custody. And we require that the said Supreme Court shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said colony and its dependencies, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever. And we do hereby, in exercise and in pursuance of the powers in us by the said Act of Parliament in that behalf vested, authorize and empower the said Supreme Court of Newfoundland, under such limitations as hereinafter mentioned, to make and prescribe such rules and orders as may be expedient touching and concerning the forms and manner of proceeding in the said Supreme Court and Circuit Courts respectively, and the practice and pleadings upon all indictments, informations, actions, suits, and other matters to be therein brought; and touching and concerning the appointing of commissioners to take bail and examine witnesses, the taking examination of witnesses *de bene esse*, and allowing the same as evidence; the granting of probates of wills and letters of administration; the proceedings of the sheriff and his deputies and other ministerial officers; the summoning of assessors for the trial of crimes and misdemeanors in the said Circuit Courts, the process of the said courts, and the mode of executing the same; the impannelling of juries; the admission of barristers, attornies and solicitors; the fees, poundage, and perquisites to be lawfully demanded by any officer, attorney, or solicitor in the said courts respectively; and other matters and things whatsoever touching the practice of the said courts as may be necessary for the proper conduct of business therein, and such rules and orders from time to time to alter, amend, or revoke, as may be requisite: Provided always, that no such rules or orders be in anywise repugnant to the

said Act of Parliament or this our charter : Provided further, that all such rules and orders be promulgated in the most public and authentic manner in our said colony for three calendar months at the least before the same shall operate and take effect, and that the same be by the first convenient opportunity transmitted through the Governor or acting Governor of our said colony to us, our heirs, and successors, for the signification of our or their pleasure respecting the allowance or disallowance thereof: And we do hereby direct, ordain, and appoint that any person or persons feeling aggrieved by any judgment, decree, order, or sentence of the said Supreme Court, may appeal to us, our heirs, and successors, in our or their Privy Council, in such manner, within such time, and under and subject to such rules, regulations, and limitations as are hereinafter mentioned, that is to say, in case any such judgment, decree, order, or sentence of the said Supreme Court shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £500 sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question of or respecting property or any civil right, amounting to or of the value of £500 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said Supreme Court may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court, by petition, for leave to appeal therefrom to us, our heirs, and successors, in our or their Privy Council, and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, the said Supreme Court shall be and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear to be most consistent with real and substantial justice; and in case the said Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs, and successors shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any such judgment, decree, order, or sentence to be suspended pending the appeal, the person or persons against whom the same shall have been given shall, in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security to the said Supreme Court for the due performance of such judgment or order as we, our heirs, or successors shall think fit to make

thereupon ; and in all cases we will and require that security shall also be given by the party or parties appellant, to the satisfaction of the said Supreme Court, for the prosecution of the appeal and for the payment of all such costs as may be awarded by us, our heirs, and successors to the party or parties respondent ; and if such last-mentioned security shall be entered into three months from the date of such petition for leave to appeal, then and not otherwise the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs, and successors, in our or their Privy Council, in such manner and form and under such rules as are observed in appeals made to us from our plantations or colonies : And we do hereby reserve to ourself, our heirs and successors, in our or their Privy Council, full power and authority upon the humble petition, at any time, of any person or persons feeling themselves aggrieved by any judgment, decree, order, or sentence of the said Supreme Court, to refuse or admit his, her, or their appeal therefrom, upon such terms and upon such limitations, restrictions, and regulations, as we or they shall think fit, and to reform, correct, or vary such judgment, decree, order, or sentence, as to us or them shall seem meet : And it is our further will and pleasure that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs, and successors, the said Supreme Court shall certify and transmit to us, our heirs, or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, sentences, and orders, had or made in such causes appealed, so far as the same have related to the matter of appeal, such copies being under the seal of the said court : And we do further direct and ordain that the said Supreme Court of Newfoundland shall in all cases of appeal to us, our heirs, and successors, conform to and execute or cause to be executed such judgments and orders as we, our heirs, and successors shall think fit to make in the premises, in such manner as any original judgment, sentence, decree, decretal order, or other order or rule of the said Supreme Court of Newfoundland could or might have been executed : And we do hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects within and belonging to the said colony, that in the execution of the several powers, jurisdictions, and authorities, hereby granted, made, given, or created, they be aiding and assisting and obedient in all things, as they will answer the contrary at their peril : Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend to prevent us, our heirs, and successors, as far as we lawfully may, from repealing these presents or any part thereof, or from making such further or other

provision, by letters-patent, for the administration of justice, civil and criminal, within the said colony and the places now or at any time hereafter to be annexed thereto, as to us, our heirs, and successors shall seem fit, in as full and ample a manner as if these presents had not been made, these presents or any thing herein contained to the contrary notwithstanding. In witness, &c.

Witness, &c.

Patent dated 19th September, 1825.

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NEWFOUNDLAND.—ROYAL INSTRUCTIONS.

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*Instructions to our trusty and well-beloved Sir Thomas John Cochrane, Knight, our Governor and Commander-in-Chief of our Island of Newfoundland, or in his absence to the Lieutenant-Governor or officer administering the government of our said Island for the time being. Given at our Court at St. James's, the 26th day of July, 1832, in the third year of our reign.*

1. With these our instructions you will receive our commission under our great seal of the United Kingdom of Great Britain and Ireland constituting you our Governor and Commander-in-Chief in and over our said island of Newfoundland and its dependencies. You are therefore with all convenient speed to assume and enter upon the execution of the trust we have reposed in you. And you are forthwith to call together the following persons, whom we do hereby appoint to be members of our Council in our said island, any three of whom to be a quorum: viz. The chief justice for the time being of our said island; the chief officer in command of our land forces for the time being in our said island next after our Governor thereof for the time being; the attorney-general for the time being of our said island; the collector or other chief officer of customs for the time being of our said island; the colonial secretary for the time being of our said island, and William Haly, Esquire.

2. And you are with all due and usual solemnity to cause our said commission, constituting you our Governor and Commander-in-Chief as aforesaid, to be read and published at the first meeting of our said Council, and shall then take, and also administer to each of the members thereof, the several oaths therein required.

3. You shall administer or cause to be administered the several oaths mentioned in our said commission to all judges, justices and other

persons who hold any place of trust or profit in our said island, without the doing of which you are not to admit any person whatsoever into any public office, nor suffer those who may have already been admitted to continue therein.

4. You are to communicate forthwith such of these our instructions to our said Council, wherein their advice and consent are mentioned to be requisite, and likewise all such others from time to time as you shall find convenient for our service to be imparted to them.

5. You are to permit the members of our said Council to have and enjoy freedom of debate, and vote in all affairs of public concern that may be submitted to their consideration in Council.

6. And that we may be always informed of the names and characters of persons fit to supply the vacancies in our said Council, you are from time to time, whenever any vacancy shall happen therein, forthwith to transmit unto us, through one of our principal Secretaries of State, the names of three persons, inhabitants of the said island, whom you shall esteem the best qualified for the trust.

7. And whereas by our commission you are empowered in case of the death or absence of any of the members of our said Council to fill up the vacancies therein to the number of three, and no more, you are therefore from time to time to send to us, through one of our principal secretaries of state, the names and qualifications of any members by you put into our said Council by the first opportunity after so doing.

8. And in the choice and nomination of the members of our said Council as also of the judges, justices, and other officers, you are always to take care that they be men of good life, well affected to our government, of good estates, and abilities suitable to their employments.

9. You are neither to augment nor diminish the number of the members of our said Council as already established, nor to suspend any of them without good and sufficient cause, nor without the consent of the majority of the said Council, signified in Council after due examination of the charge against such Councillor, and his answer thereunto; and in case of the suspension of any of them you are to cause your reasons for so doing, together with the charges and proofs against such Councillor, and his answer thereunto, to be duly entered upon the Council-book, and forthwith to transmit copies to us, through one of our principal Secretaries of State. Nevertheless, if it should happen that you should have reasons for suspending any of the members of our said Council, not fit to be communicated to our said Council, you may in that case suspend such member without their consent. But you are thereupon immediately to send to us, through one of our principal Secretaries of State, an account of your proceedings therein, together



with your reasons at large for such suspension, and also your reasons for not communicating the same to our Council.

10. And whereas effectual care ought to be taken to oblige the members of our said Council to a due attendance therein, and thereby to prevent the inconveniences that may happen from the want of a quorum to transact business as occasion may require, it is our will and pleasure that if any of the members of our said Council shall hereafter absent themselves from the said island, and continue absent above the space of six months together without leave from you or our Commander-in-Chief for the time being first obtained under your or his hand or seal, or shall remain absent for the space of two years successively without leave given them under our royal sign manual and signet, their place or places in the said Council shall immediately thereupon become void; and that if any of the members of our said Council, then residing within our said island, shall hereafter absent themselves when duly summoned without a sufficient cause, and shall persist in such absence after being thereof admonished by you, you suspend the said Councillors so absenting themselves till our further will and pleasure therein be known, giving immediate notice thereof to us, through one of our principal Secretaries of State: and we do hereby will and require that our royal pleasure be signified to the members of our said Council and entered in the Council-book as a standing rule.

11. And whereas by our aforesaid commission you are authorized and empowered to summon and call General Assemblies of the freeholders and householders within our said island, in such manner and form, and according to such powers, instructions, and authorities as are granted or appointed by these our instructions in that behalf, you are therefore, for the purpose of electing the members of such Assemblies, hereby authorized to issue proclamations dividing our said island into districts or counties, towns or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each of such districts or counties, towns or townships respectively, and from time to time to nominate and appoint proper persons to execute the office of returning officer in each of the said districts or counties, towns or townships; and you are, so soon as you shall see expedient, to issue writs in our name, directed to the proper officers in each district or county, town or township, directing them to summon the freeholders and householders thereof, to proceed to the election of persons to represent them in the General Assembly according to the regulations and directions to be signified in the proclamation to be issued by you as aforesaid.

12. You are to observe in the passing of all laws, that the style of enacting the same be by the Governor, Council, and Assembly.

13. And we do hereby require and command that you do not, on any pretence whatever, give your assent to any law or laws to be passed by which the number of the Assembly shall be enlarged or diminished, the duration ascertained, the qualifications of the electors or the elected fixed or altered, or by which any regulations shall be established with respect thereto, until you shall have first transmitted unto us, through one of our principal Secretaries of State, the draft of such bill or bills, and shall have received our royal pleasure thereupon, unless you take care in the passing such bill or bills that a clause or clauses be inserted therein suspending and deferring the execution thereof until our will and pleasure shall be known thereupon.

14. And you shall not re-enact any law to which the assent of us or our royal predecessors has once been refused, without express leave for that purpose first obtained from us, upon a full representation by you, to be made to us through one of our principal Secretaries of State, of the reason and necessity for re-enacting such law.

15. And it is our express will and pleasure, that no law for constituting any court or courts of judicature, or for establishing the militia, shall be a temporary law; and that no law for granting unto us any sum or sums of money by duties of impost, tonnage, or excise, be made to continue for less than one whole year; as also that no other laws whatsoever be made to continue for less than two years, except only in cases where it may be necessary for some unforeseen emergency to make provision by law for a service in its nature temporary and contingent.

16. You are also, as much as possible, to observe in the passing of all laws, that each different matter be provided for by a different law, without intermixing in one and the same act such things as have no proper relation to each other; and you are more especially to take care that no clause or clauses be inserted in, or annexed to, any act which shall be foreign to what the title of such respective act imports; and that no perpetual clause be part of any temporary law; and that no act whatever be suspended, altered, continued, revived, or repealed by general words, but that the title and date of such act so suspended, altered, continued, revived, or repealed, be particularly mentioned and expressed in the enacting part.

17. And you are particularly enjoined not to pass any law, or do any act, by grant, deed, conveyance, or otherwise, whereby our revenue may be lessened or impaired without our especial leave or command thereon.

18. It is our will and pleasure that you do not give your assent to any bill or bills for raising money by the institution of any public or private lotteries whatsoever until you shall have first transmitted unto

us, through one of our principal Secretaries of State, a draft or drafts of such bill or bills, and shall have received our directions thereupon.

19. It is our will and pleasure that you do not, on any pretence whatever, give your assent to, or pass any bill or bills in our island under your government, by which the lands, tenements, goods, chattels, rights and credits of persons who have never resided within our said island, shall be liable to be seized or taken in execution for the recovery of debts due from such persons, otherwise than is allowed by law in cases of a like nature within our realm of England, until you shall have first transmitted unto us, through one of our principal Secretaries of State, the draft of such bill or bills, and shall have received our royal pleasure thereupon, unless you take care, in the passing of such bill or bills, that a clause or clauses be inserted therein, suspending and deferring the execution thereof until our royal will and pleasure shall be known thereupon.

20. It is our further will and pleasure that you do not, upon any pretence whatsoever, give your assent to any bill or bills that may have been or shall hereafter be passed by the Council and Assembly of the island under your government for the naturalization of aliens, nor for the divorce of persons joined together in holy matrimony, nor for establishing a title in any person to lands, tenements, and real estates in our said island, originally granted to or purchased by aliens antecedent to naturalization.

21. Whereas great mischiefs have arisen by the frequent passing of bills of an unusual and extraordinary nature and importance in the plantations, which bills remain in force there from the time of enacting until our pleasure be signified to the contrary, we do hereby will and require you not to pass or give your assent to any bill or bills passed in the Assembly of an unusual and extraordinary nature and importance, whereby our prerogative or the property of our subjects may be prejudiced, nor to any bill or bills whereby the trade or shipping of this kingdom shall be in anywise affected, until you shall have first transmitted unto us, through one of our principal Secretaries of State, a draft of such bill or bills, and shall have received our royal pleasure thereupon, unless you take care in the passing any such bills as aforementioned that there be a clause inserted therein, suspending and deferring the execution thereof until our pleasure shall be known concerning the same.

22. You are also to take care that no private act be passed, whereby the property of any private person may be affected, in which there is not a saving of the rights of us, our heirs and successors, all bodies politic and corporate, and of all other, except such as are mentioned in the said act, and those claiming by, from, and under them; and

further, you shall take care that no such private act be passed without a clause suspending the execution thereof until the same shall have received our royal approbation. It is likewise our will and pleasure that you do not give your assent to any private act until proof be made before you in Council, and entered in the Council-book, that public notification was made, of the parties' intention to apply for such an act, in the several parish churches where the premises in question lie, for three Sundays at least successively, before any such act shall be brought into the Assembly, and that a certificate, under your hand, be transmitted with, and annexed to every such private act, signifying that the same has passed through all the forms above mentioned.

23. You are to take care that in all acts or orders to be passed within our said island, in any case for levying money or imposing fines and penalties, express mention be made that the same is granted or reserved to us, our heirs and successors, for the public uses of the said island, and the support of the government thereof, as by the said act or order shall be directed.

24. You are not to suffer any public money whatsoever, whether it be appropriated to any particular service or not by the act granting the same, to be issued or disposed of otherwise than by warrant under your hand, by and with the consent of the said Council. But the Assembly may nevertheless be permitted from time to time to view and examine the accounts of money or value of money disposed of by virtue of laws made by them, as there shall be occasion.

25. You are not to permit any clause whatsoever to be inserted in any law for levying of money, or the value of money, whereby the same shall not be made liable to be accounted for unto us, here in this kingdom, and to our Commissioners of our Treasury, or our High Treasurer for the time being; and we do particularly require and enjoin you, upon pain of our highest displeasure, to take care that fair books of accounts of all receipts and payments of all such money be duly kept, and copies thereof be transmitted to our Commissioners of our Treasury, or to our High Treasurer for the time being, and in which books shall be specified every particular sum raised or disposed of, together with the names of the persons to whom any payment shall be made, to the end we may be satisfied of the right and due application of the revenue of our said island, with the probability of the increase and diminution of it, under every head and article thereof.

26. It is our will and pleasure that you do in all things conform yourself to the provisions contained in an Act of Parliament passed in the fourth year of the reign of his late Majesty King George the Third, intituled, "An Act to prevent paper bills of credit hereafter to be issued in any of His Majesty's colonies or plantations in America

from being declared to be a legal tender in payment of money, and to prevent the legal tender of such bills as are now subsisting from being prolonged beyond the periods limited for recalling in and sinking the same;" and also of an act passed in the thirteenth year of the reign of his late Majesty to explain and amend the above-recited act passed in the fourth year of his reign as aforesaid; and you are not to give your assent to, or pass any act whereby bills of credit may be struck or issued in lieu of money, or for payment of money, either to you, our Governor, or to any person whatsoever, unless a clause be inserted in such act, declaring that the same shall not take effect until the said act shall have been approved and confirmed by us, our heirs or successors.

27. You are to transmit an authenticated and separate copy of every law, statute or ordinance that at any time hereafter shall be made or enacted within the island under your government, under the public seal, unto us, through one of our principal Secretaries of State, within three months, or sooner, after their being enacted, upon pain of our highest displeasure, and of the forfeiture of that year's salary wherein you shall omit to send over the said laws, statutes and ordinances as aforesaid, within the time above-mentioned, as also of such other penalty as we shall please to inflict: but if it shall happen that no shipping shall come from our said island within three months after the making such laws, statutes, and ordinances, the same are to be transmitted by the next conveyance after the making thereof, whenever it may happen, for our approbation or disallowance of the same.

28. And it is our further will and pleasure that the copies and duplicates of all acts that shall be transmitted as aforesaid be fairly abstracted in the margins, and there be inserted the several dates or respective times when the same passed the Council and Assembly, and received your assent; and you are to be as particular as may be in your observations, to be sent to us through one of our principal Secretaries of State, upon every act; that is to say, whether the same is productive of a new law, declaratory of a former law, or does repeal a law then before in being, and you are likewise to send to us, through one of our principal Secretaries of State, the reasons for the passing of such laws, unless the same do fully appear in the preambles of the said acts.

29. You are to require the Secretary of the island under your government, or his deputy for the time being, to furnish you with transcripts of all such acts and public orders as shall be made from time to time, together with copies of the journals of the Council, and that all such copies be fairly abstracted in the margins, to the end the same may be transmitted to us, through one of our principal Secretaries of

State, which he is duly to perform upon pain of incurring the forfeiture of his office.

30. You are also to require from the clerk of the Assembly of the said island, or other proper officer, transcripts of all the journals and other proceedings of the said Assembly, and that all such transcripts be fairly abstracted in the margents, to the end the same may in like manner be transmitted as aforesaid.

31. You shall not appoint any person to be a judge or justice of the peace without the advice and consent of the majority of the Council of our said island, signified in Council. And it is our further will and pleasure that all commissions to be granted by you to any person or persons to be judges, justices of the peace, or other necessary officers, be granted during pleasure only.

32. You shall not suspend any of the judges, justices, or other officers or ministers, without good and sufficient cause, which you shall signify in the fullest and most distinct manner to us, through one of our principal Secretaries of State.

33. It being of the greatest importance to our service, and to the welfare of our subjects, that justice be everywhere speedily and duly administered, and that all disorders, delays, and other undue practices in the administration thereof, be effectually prevented; we do particularly require you to take especial care that in all courts where you are authorized to preside, justice be impartially administered; and that in all other courts established within our said island, all judges and other persons therein concerned do likewise perform their several duties without any delay or partiality. You shall not erect any court or office of judicature not before erected or established, nor dissolve any court or office already erected or established, without our especial order.

34. You are, for the better administration of justice, to endeavour to get a law passed in our said island, wherein shall be set the value of men's estates, either in goods or lands, under which they shall not be capable of serving as jurors.

35. You are to take care that all writs be issued in our name throughout our said island under your government.

36. Whereas, in pursuance of an act passed in the fifth year of the reign of his late Majesty, King George the Fourth, intituled, "An Act for the better administration of justice in Newfoundland, and for other purposes," by our charter or letters patent, issued under the great seal of the United Kingdom of Great Britain and Ireland, a supreme court of jurisdiction, called the "Supreme Court of Newfoundland," was erected and established in our said island, with certain powers and authorities, and under certain regulations therein specified, you are

hereby required to take care that the same be duly complied with, and put in execution.

37. You are, with the advice and consent of our Council, to take especial care to regulate all salaries and fees belonging to places, or paid upon emergencies, that they be within the bounds of moderation, and that no extortion be made on any occasion whatsoever, as also that tables of all fees be publicly hung up in all places where such fees are to be paid ; and you are to transmit copies of all such tables of fees to us, through one of our principal Secretaries of State.

38. You shall not by colour of any power or authority, hereby or otherwise granted or mentioned to be granted to you, take upon you to give, grant, or dispose of any office or place within our said island, which now is or shall be granted under the great seal of this kingdom, or to which any person is or shall be appointed by warrant under our sign manual and signet, any further than you may, upon the vacancy of any such office or place, or upon the suspension of any such officer by you, put in any fit person to officiate in the interim till you shall have represented the matter to us, through one of our principal Secretaries of State, which you are to do by the first opportunity, and have received our further directions therein.

39. You are to transmit unto us, through one of our principal Secretaries of State, with all convenient speed, a particular account of all establishments of jurisdictions, courts, offices and officers, powers, authorities, fees, and privileges, granted and settled, or which shall be granted and settled within our said island, as likewise an account of all the expenses attending the establishment of the said courts, and of such funds as are settled and appropriated to discharge the same.

40. It is our express will and pleasure that you be at all times aiding and assisting unto the officers appointed for the managing, levying, collecting and receiving public revenues, and such duties and revenues as are or shall hereafter be laid and imposed within your government, and the seizures, forfeitures, and arrears which shall accrue and grow due by reason thereof.

41. And whereas complaints have been made by the officers of our customs in our plantations in America that they have been frequently obliged to serve on juries, and personally to appear in arms whensoever the militia is drawn out, and thereby are much hindered in the execution of their employments, our will and pleasure is that you take effectual care, and give the necessary directions that the several officers of our customs be excused and exempted from serving on any juries, or personally appearing in arms in the militia, unless in case of absolute necessity, or serving any parochial offices which may hinder them in the execution of their duties.

42. And in case of the vacancy of the collector, or any of our officers of the customs by death, removal, or otherwise, and in order that there may be no delay given on occasion of such vacancy to the masters of ships or merchants in their despatch, you are hereby empowered, subject to such instructions as you shall receive from our Commissioners of our Treasury, or our High Treasurer, or from the Commissioners of our Customs for the time being in this behalf, to appoint other persons duly qualified to execute such offices, until further directions shall be received from our Commissioners of our Treasury, or our High Treasurer, to whom you are to give notice of such appointments by the first opportunity, taking care that you do not, under pretence of *this instruction*, interfere with the powers and authorities given to our said Collector by our Commissioners of our Treasury, or our High Treasurer, or by the Commissioners of our customs.

43. You shall not remit any fines or forfeitures whatever above the sum of £50, nor dispose of any forfeitures whatsoever until upon signifying unto our Commissioners of our Treasury, or our High Treasurer for the time being, the nature of the offence and the occasion of such fines and forfeitures, with the particular sums or value thereof (which you are to do with all speed,) you shall have received our directions therein, but you may in the meantime suspend the payment of the said fines and forfeitures.

44. It is our will and pleasure that you do not dispose of forfeitures or escheats to any persons until the provost marshal or other proper officer have made inquiries by a jury upon their oaths into the true value thereof, nor until you shall have transmitted to our Commissioners of our Treasury, or to our High Treasurer for the time being, a particular account of such forfeitures and escheats and the value thereof, and shall have received our directions thereupon, and you are to take care that the produce of the said forfeitures and escheats, in case we shall think proper to give you direction to dispose of the same, be duly paid to the receiver of our casual revenue; and that a full account thereof be transmitted to our Commissioners of our Treasury, or to our High Treasurer for the time being, with the names of the persons to whom disposed of.

45. Whereas you will receive from our Commissioners for executing the office of High Admiral a commission constituting you Vice-Admiral of our said island, you are hereby required and directed carefully to put in execution the several powers thereby granted to you.

46. And whereas commissions have been granted in our colonies and plantations for trying pirates in those parts, pursuant to the acts for the more effectual suppresssion of piracy, our will and pleasure is, that in all matters relating to pirates you govern yourself according to the



intent of the acts before mentioned, and any commission you may receive in reference thereto.

47. And whereas there have been great irregularities in the manner of granting commissions to private ships of war, you are to govern yourself, whenever there shall be occasion, according to the commission and instructions granted in this kingdom: but you are not to grant commissions of marque or reprisal against any prince or state or their subjects in amity with us to any person whatsoever without our special command.

48. Whereas we have thought it necessary for our service to constitute and appoint a Receiver-General of our rights and perquisites of the Admiralty, it is therefore our will and pleasure that you be aiding and assisting to the said Receiver-General, his deputy or deputies, in the execution of the said office of Receiver-General; and we do hereby enjoin and require you to make up your accounts with him, his deputy or deputies, of such rights of Admiralty (effects of pirates included) as you or your officers have received, or shall or may receive for the future, and to pay over to the said receiver general, his deputy or deputies, for our use, all such sum or sums of money as shall appear upon the foot of such accounts to be and remain in your hands, or in the hands of any of your officers: And whereas our said Receiver-General is directed, in case the parties chargeable with any part of such our revenue refuse, neglect, or delay payment thereof, by himself or sufficient deputy, to apply in our name to our Governors, Judges, Attorney-general or any other our officers or magistrates, to be aiding or assisting to him in recovering the same, it is therefore our will and pleasure that you, our Governor, our Judges, our Attorney-general, and all other officers whom it may concern, do use all lawful authority for the recovering and levying thereof.

49. And whereas by letters patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 10th day of May, 1825, the island of Newfoundland was constituted to be part of the see of the Bishop of Nova Scotia, and the said bishop was thereby duly authorized to exercise jurisdiction, spiritual and ecclesiastical, in the said colonies, it is our will and pleasure that in the administration of the government of our said island you should be aiding and assisting to the said bishop, and to his commissary or commissaries, in the execution of their charge, and the exercise of such ecclesiastical jurisdiction, excepting only the granting licenses for marriages and probates of wills.

50. We do enjoin and require that you do take especial care that Almighty God be devoutly and truly served throughout your government, the book of common prayer, as by law established, read each

Sunday and holiday, and the blessed Sacrament administered according to the rites of the Church of England. You shall be careful that all orthodox churches already built there be well and orderly kept, and that more be built, as our island shall, by God's blessing, be improved. And that besides a competent maintenance to be assigned to the minister of each orthodox church, a convenient house be built at the common charge for each minister, and a competent portion of land for a glebe be allotted to him. And you are to take care that the parishes be so limited and settled as you shall find most convenient for the accomplishing this good work, and in all matters relating to the celebration of divine worship, the erection and repair of churches, the maintenance of ministers, and the settlement of parishes throughout your government, you are to advise with the right reverend father in God the Bishop of Nova Scotia for the time being.

51. Upon the vacancy of any ecclesiastical benefice in our said island, you will present to the said Bishop of Nova Scotia for the time being, for institution to such vacant benefice, any clerk in holy orders of the United Church of England and Ireland, who shall have been actually resident within the said diocese, and officiating there as a clerk in holy orders, for six calendar months at the least next before such benefice shall have become vacant, whom the said bishop may certify to you to be a fit and proper person to fill such vacancy, and to be a person of good life and conversation, and conformable to the doctrine and discipline of the said United Church. But if at the time of any such vacancy occurring there shall not be resident within the said diocese any clerk in holy orders of the said United Church who shall have been resident and officiating therein as aforesaid, in whose favour the said bishop shall think proper so to certify to you, or if no such certificate shall be received by you from the said bishop within three calendar months next after such vacancy shall occur, then and in either of such cases you shall forthwith report the circumstances to us, through one of our principal Secretaries of State, to the intent that we may nominate some fit and proper person, being a clerk in holy orders as aforesaid, to fill the said vacancy. And we do enjoin and command you to present to the said bishop for institution to any such vacant ecclesiastical benefice, any clerk who may be so nominated by us, through one of our principal Secretaries of State.

52. You are to inquire whether there be any minister within your government who preaches and administers the sacrament in any orthodox church or chapel, without being in due orders, and to give an account thereof to the said Bishop of Nova Scotia.

53. And whereas doubts have arisen whether the powers of granting licences for marriages and probates of wills, commonly called the

Office of Ordinary, which we have reserved to you, our Governor, can be exercised by deputation from you to any other person within our said island under your government, it is our express will and pleasure, and you are hereby directed and required not to grant deputations for the exercise of the said powers, commonly called the Office of Ordinary, to any person or persons whatsoever in our said island under your government.

54. And you are to take especial care that a table of marriages established by the canons of the Church of England be hung up in every orthodox church and duly observed.

55. The Right Reverend Father in God, Edmund, then Lord Bishop of London, having presented a petition to His Majesty King George the First, humbly beseeching him to send instructions to the Governors of all the several colonies and plantations in America, that they cause all laws already made against blasphemy, profaneness, adultery, fornication, polygamy, incest, profanation of the Lord's day, swearing, and drunkenness in their respective governments to be rigorously executed, and we, thinking it highly just that all persons who shall offend in any of the particulars aforesaid should be prosecuted and punished for their said offences, it is therefore our will and pleasure that you take due care for the punishment of the aforementioned vices, and that you earnestly recommend that effectual laws be passed for the restraint and punishment of all such of the aforementioned vices against which no laws are as yet provided. And also you are to use your endeavours to render the laws in being more effectual, by providing for the punishment of the aforementioned vices, by presentment upon oath to be made to the temporal courts by the churchwardens of the several parishes, at proper times of the year to be appointed for that purpose; and for the further discouragement of vice and encouragement of virtue and good living, you are not to admit any persons to public trusts or employments in the island under your government whose ill fame and conversation may occasion scandal.

56. It is our further will and pleasure that you recommend to the legislature to enter upon proper methods for the erecting and maintaining schools in order to the training up of youth to reading, and to a necessary knowledge of the principles of religion. You are not, however, to give your consent to any act respecting religion without a clause suspending its operation until our pleasure shall have been signified thereupon, unless a draft thereof shall have been previously transmitted by you for our consideration and approval.

57. And we do further direct that in all matters arising within your government connected with the education of youth in the principles of the Christian religion according to the doctrine of the said United

Church of England, or connected with the prevention of vice and profaneness, or the conversion of negroes and other slaves, or connected with the worship of Almighty God, or the promotion of religion and virtue, you be advising with the bishop for the time being of the said diocese of Nova Scotia, and be aiding him in the execution of all such designs and undertakings as may be recommended by the said bishop for the promotion of any of the objects before mentioned, so far as such designs and undertakings may be consistent with the law, and with your said commission and these our instructions.

58. You are to transmit to us, through one of our principal Secretaries of State, regular monthly returns of the militia of our said island whenever and so long as the same shall be embodied, with a particular state of their arms and accoutrements; and for the due preservation and security of which you are to establish such regulations as you shall judge to be most effectual for that purpose.

59. You shall not upon any occasion whatsoever establish or put in execution any articles of war, or other law martial, upon any of our subjects, inhabitants of our said island, without the advice and consent of our Council.

60. And in case of any distress of any other of our plantations, you shall, upon application of the respective Governors thereof unto you, assist them with what aid the condition and safety of our island under your government can spare.

61. You shall, from time to time, give unto us, through one of our principal Secretaries of State, an account of the wants and defects of the island under your government, what are the chief products thereof, what improvements have been lately made, and what further improvements you conceive may be made, or advantages gained by trade, and in what way we may contribute thereunto.

62. If any thing shall happen which may be of advantage or security to our island under your government, which is not herein or by our commission provided for, we do hereby allow you, with the advice and consent of our Council, to take orders for the present therein, giving unto us, through one of our principal Secretaries of State, speedy notice thereof, that so you may receive our ratification, if we shall approve the same: Provided always, that you do not, under colour of any power or authority hereby given to you, commence or declare war without our knowledge and particular commands therein first obtained leave for so doing from us, under our sign-manual and signet, or by our order in our Privy Council.

63. And whereas we have thought fit, by our commission, to direct that in case of your death or absence, and there be at that time no person within our said island commissioned or appointed by us to be

Lieutenant-Governor, or specially appointed by us to administer the government within our said island, that the councillor whose name is first placed in our instructions to you, (unless it shall therein be otherwise signified,) and who shall be, at the time of your absence, residing within our said island, and who shall take the oaths appointed to be taken by you or the Commander-in-Chief of our said island, shall take upon him the administration of the government, and execute our said commission and instructions and the several powers and authorities therein contained, in the manner therein directed. It is, nevertheless, our express will and pleasure that in such case the councillor so administering the government shall forbear to pass any act or acts but what are immediately necessary for the peace and welfare of the said island, without our particular order for that purpose; and that he shall not take upon him to dissolve the Assembly then in being, or to remove or suspend any of the members of our Council, nor any judges, justices of the peace, or other officer, civil or military, without the advice and consent of at least seven of the Council, nor even then without good and sufficient reason for the same, which the said President is to transmit, signed by himself and the respective Council, to us, through one of our principal Secretaries of State.

64. And whereas we are willing to provide in the best manner for the support of the government of our said island, by setting apart sufficient allowances to such as shall be our Governor or Commander-in-Chief, residing for the time being within the same, our will and pleasure is, that when it shall happen that you shall be absent from our said island, one full moiety of the salary, and of all perquisites and emoluments whatsoever, which would otherwise become due unto you, shall, during the time of your absence, be paid and satisfied unto such Lieutenant-Governor or President of the Council for the time being, which we do hereby order and allot unto him for his maintenance, and for the better support of the dignity of our government.

65. And you are upon all occasions to send to us, through one of our principal Secretaries of State, a particular account of your proceedings, and of the conditions of affairs within your government.

(Copy.)

WILLIAM R.

A PROCLAMATION.

WILLIAM THE FOURTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, &c.

To all to whom these presents shall come, greeting;

Whereas by our letters-patent under the great seal of our United Kingdom aforesaid, bearing date at Westminster the 2d of March,

G G

1832, in the second year of our reign, we have given and granted to our trusty and well-beloved Sir Thomas John Cochrane, Knight, our Governor and Commander-in-Chief of our island of Newfoundland, full power and authority to summon and call a General Assembly of the freeholders and householders within our said island; it is therefore our pleasure, and we do hereby declare and make known to all our loving subjects within the same, that for the purpose of the election of the members of the said Assembly, the said island shall be divided into nine districts, to be called respectively,

- The district of St. John.
- The district of Conception Bay.
- The district of Fogo.
- The district of Bonavista.
- The district of Trinity Bay.
- The district of Ferryland.
- The district of Placentia and St. Mary.
- The district of Burin.
- The district of Fortune Bay.

And it is our further will and pleasure, and we do hereby declare, that the before-mentioned district of St. John shall consist of and include all that part of our said island bounded by the shore which is situate and lying between Petty Harbour and Broad Cove.

And that the before-mentioned district of Conception Bay shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Broad Cove and Bay Verd's Head.

And that the before-mentioned district of Fogo shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Cape St. John and Fogo Island, including that island.

And that the before-mentioned district of Bonavista shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Cape Freels and Cape Bonavista.

And that the before-mentioned district of Trinity Bay shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Cape Bonavista and Cape Verd's Head.

And that the before-mentioned district of Ferryland shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Petty Harbour and Cape Race.

And that the before-mentioned district of Placentia and St. Mary shall consist of and include all that part of our said island which,

bounded in like manner, is situate and lying between Cape Race and Rushven.

And that the before-mentioned district of Burin shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Rushven and Garnish.

And that the before-mentioned district of Fortune Bay shall consist of and include all that part of our said island which, bounded in like manner, is situate and lying between Garnish and Bonne Bay.

And we do further signify and declare our pleasure to be that the said district of St. John shall be represented in the Assembly by three members.

And that the said district of Conception Bay shall be represented in the said Assembly by four members.

And that each of the said districts of Fogo, of Bonavista, of Trinity Bay, and of Ferryland, shall be represented in the said Assembly by one member.

And that the said district of Placentia and St. Mary shall be represented in the said Assembly by two members.

And that each of the said districts of Burin and Fortune Bay shall be represented in the said Assembly by one member.

And it is our will and pleasure that the Governor for the time being of our said island do appoint some fit person to be the returning officer within each of the said districts.

And we do further declare our pleasure to be that our said Governor do issue in our name writs for the election of the members of the several districts before mentioned, which writs shall be addressed to the several returning officers aforesaid, and shall by them be returned to the Colonial Secretary for the time being of our said island.

And it is our will and pleasure that every man, being of the full age of twenty-one years and upwards, and being of sound understanding, and being our natural born subject, or having been lawfully naturalized, and never having been convicted in due course of law of any infamous crime, and having for two years next immediately preceding the day of election occupied a dwelling-house within our said island as owner or tenant thereof, shall be eligible to be a member of the said House of Assembly.

And it is our further will and pleasure that every man who for one year next immediately preceding the day of election hath occupied a dwelling-house within our said island as owner or tenant thereof, and who in other respects may be eligible, according to the regulations aforesaid, to be a member of the said House of Assembly, shall be competent and entitled to vote for the election of members of the said Assembly in and for the district within which the dwelling-house so occupied as aforesaid by him may be situate.

And it is our pleasure that the votes for the members of the said Assembly shall be taken by the said several returning officers at such one or more place or places within each of the said districts as shall for that purpose be appointed in the body of the writ addressed to the returning officer of every such district respectively, and at or within such time or times as shall for the purpose be therein limited: but inasmuch as by reason of the difficulty of internal communication within our said island, many persons entitled to vote might be prevented from the exercise of such their franchise, if in every case it were necessary to attend in person for that purpose, we do therefore declare our pleasure to be, that in respect of any dwelling-house situate at the distance of more than (1) miles from the nearest place of election, within any of the said districts, the vote of any householder, duly qualified as aforesaid, may be given without his personal attendance, by a written notice subscribed by such voter, in the presence of two credible witnesses, and duly attested by their signatures; which notices shall be in such form as our Governor for the time being of our said island shall from time to time direct.

And it is our further pleasure, that if any candidate or voter at any such election shall object to any vote then tendered, it shall be the duty of the returning officer to hear such objection, and what may be alleged in support of, or in answer to, the same, and to examine on oath the parties by or against whom such objection may be raised, and any person or persons who may be adduced as a witness or as witnesses on either side; and upon such hearing, to admit or to overrule any such objection as may to such returning officer appear just and right.

And we do further declare our will to be, that the persons in favour of whom the greater number of votes shall be given in any such district shall be publicly declared by such returning officer to be duly elected to be the representatives thereof in the said General Assembly, and shall thereupon be returned and take their seats accordingly: Provided always, that in cases of peculiar doubt or difficulty, it shall be competent for any such returning officer to make a special return, setting forth the grounds of such doubt, upon which the said House of Assembly shall afterwards decide.

And it is our will, and we do further declare, that the Assembly so to be chosen as aforesaid shall continue only during our pleasure, and that the said Assembly shall not proceed to the dispatch of any business, unless six members at the least shall be present at and during the whole of the deliberations of the said House thereupon.

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(1) Left blank in the House of Commons' Paper, 1332, No. 704.



And whereas it may be necessary, in order to the complete execution of the several purposes aforesaid, that further regulations should be made for the conduct of the said elections, and the return of members to serve in the said House of Assembly, we have therefore authorized, and do hereby authorize, our Governor for the time being of our said island, by any proclamation or proclamations to be by him from time to time issued in our name and on our behalf, to make such further regulations as may be necessary for the conduct of the said elections, and for the return of members to serve in the said House of Assembly, and for the due discharge of the duties of the said returning officer; and which regulations shall be of full force, virtue, and effect, until provision be otherwise made by law, it being, nevertheless, our pleasure that the regulations so to be made as aforesaid be not repugnant to, or inconsistent with, the several provisions hereinbefore contained, or any of them.

Given at our Court at St. James's, on the Twenty-sixth day of July, One Thousand Eight Hundred and Thirty-two, in the third year of our reign.

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## NOVA SCOTIA.

THIS colony is situated between the 43° and 49° of north latitude, and the 60° and 67° west longitude, is bounded on the north by the River St. Lawrence, on the east by the Gulf of the St. Lawrence and the Atlantic Ocean, and by Canada and New England on the west. In the year 1784 this province was divided into two governments, of Nova Scotia and New Brunswick. The latter is bounded on the westward by the River St. Croix, and by a line drawn due north from thence to the southern boundary of the province of Quebec; to the northward, by that boundary as far as the western extremity of the Bay de Chaleurs; to the eastward, by that bay to the Bay Verte, in the Gulf of St. Lawrence; to the south, by a line in the centre of the Bay of Fundy; from the River St. Croix to the mouth of the Musquat River; by that river to its source, and from thence by a line due east across the isthmus into the Bay Verte, including all the islands within six leagues of the coast.—Ency. Brit.

## HISTORY AND CONSTITUTION.

The first grant of lands in this colony was given by James I. to his secretary, Sir William Alexander, from whom it had the name of Nova Scotia. In 1604 the French settled in the colony, and gave it the name of Acadia. Their colony was yet in its infancy when the settlement of New England was first established in its neighbourhood. Hostilities perpetually occurred between the settlers in the two colonies, till Acadia was, at the peace of Utrecht, ceded to England. In 1749 the ministry, having begun to think that the province was one of considerable importance, offered great advantage to all settlers, particularly soldiers and sailors, in Nova Scotia, and 3740 persons accordingly went thither in that year. The population was estimated by Mr. Colquhoun in 1812 at 100,000.—Ency. Brit.

Prince Edward's Island, then called the Island of St. John, was annexed to the government of Nova Scotia by

the commission to Governor Parr on the 11th September, 1784, which commission directed the Governor to call General Assemblies for the different colonies placed under his command.

By the instructions to the Governor of Nova Scotia, also dated 11th September, 1784, he was directed not to call a General Assembly of the island of Cape Breton, such Assembly being then inexpedient.

By the commission to the Duke of Richmond of the 10th April, 1816, his Grace was constituted Governor-General over the province of Nova Scotia, the island of Prince Edward, (formerly St. John,) and the island of Cape Breton; and he was authorized to summon General Assemblies of the freeholders and planters within his government, which General Assemblies were to make laws for each of the three places respectively, "not repugnant, but as near as local circumstances will permit, to the laws of Great Britain."

A similar instruction as before, relative to Cape Breton, accompanied this commission.

By the commission of the 27th April, 1820, to the Earl of Dalhousie, he was appointed Governor-in-Chief over the Canadas, the provinces of Nova Scotia, New Brunswick, and Prince Edward's Island; and it was expressly directed and declared, that Cape Breton should in future form part of the province of Nova Scotia. The Governor was authorized to summon a General Assembly for Nova Scotia and for Prince Edward's Island respectively.

The instructions of the same date refer to and confirm the express declaration respecting Cape Breton in the commission, and directs the Governor to summon to the Assemblies of Nova Scotia such a number of freeholders from Cape Breton as were usually summoned to such Assemblies before the time when the said island was first separated from the province of Nova Scotia.

A proclamation was issued on the 9th of October, 1820, by Sir James Kempt, the Lieutenant-Governor of Nova Scotia, making the necessary regulations for carrying into effect the re-annexation of Cape Breton to Nova Scotia, and dissolving the separate council of the latter place.

By an act of Assembly of Nova Scotia, dated 22d December, 1820, the civil government and administration of justice in Cape Breton was directed to be conformable to the usage and practice of the Province of Nova Scotia. The act recited, that Cape Breton was in future to be

known by the name of the County of Cape Breton, and to be represented in the Assembly of the province by two members.

The Supreme Court was directed to be held by the Chief Justice, or in his absence by two of the Assistant Justices or one Assistant Justice, and the Associate Circuit Judge of the Court, and that the Governor might appoint five fit persons to be judges of the Inferior Court of Common Pleas in the said county.

The granting of probate of wills and of letters of administration for the said county were to be done at Sydney. The barristers and attornies of the Supreme Court were to be allowed to practise in that and all the other courts of the county, but not elsewhere out of the county, unless admitted in the Supreme Court at Halifax in Nova Scotia. —Papers relative to the re-annexation of Cape Breton to Nova Scotia, House of Commons' Papers, No. 416, 23d June, 1823.

The constitution of Nova Scotia is, by royal commission, a representative provincial government, one of the three original forms of the colonial constitutions. Its legislature is formed upon that of the United Kingdom, and consists of a Council and House of Assembly. The Council are twelve in number, at the head of whom are the Chief Justice of the province, who is the president, and the Bishop of Nova Scotia, who ranks next to him.

In 1758 a House of Representatives was formed, agreeably to a constitution granted to the colony, corresponding with that of England.

The Legislative Assembly is composed of forty-one members. They are elected by inhabitants holding an annual interest of 40s. in land, or who are householders. —2 Macg. Brit. Amer. and Almanack for Nova Scotia.

#### LAWS. (1)

All causes, both civil and criminal, are determined according to the common and statute law of England, and the statutes of the province. The bankrupt laws of England are said not to extend to this province. (2)

#### COURTS.

The courts of law are constituted to correspond with

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(1) See ante, p. 3 to 16, on the general topic how far the colonies are

subject to the law of the mother country.

(2) But see ante, pp. 102, 103, 104.

those of England. The practice of the Court of Chancery is agreeable to that of England. The Governor is chancellor, but there is also a Master of the Rolls. The Supreme Court of Judicature is modelled after the Court of King's Bench in England, and closely follows its practice. It possesses also the peculiar jurisdictions of the Courts of Common Pleas and Exchequer. The Supreme Court consists of one chief justice, three puisne judges, and an associate judge. The law officers of the Crown are an Attorney and Solicitor-general.

There is a Court of Common Pleas in each of the ten counties into which the province is divided. Their jurisdiction extends only to civil actions within the county.

Justices of the peace take cognizance of breaches of the peace, and of matters of debt not exceeding £5. Appeals from all the inferior courts may be made to the Supreme Court, and from the Supreme Court to the King in Council. There is a Court of Quarter Sessions in each county.

There is a Court of Error and of Marriage and Divorce, composed of the members of the Council.

There is a Court of Vice-Admiralty, presided over by the Chief Justice of the province.

There is a Court of Escheats and Forfeitures, presided over by one commissioner, and a Court for the probate of wills and granting letters of administration. The jurisdiction of this court is entrusted to an officer styled the Surrogate General of the Province.

The general expense of the judges and courts of justice is stated in the account of the Colonial Revenue to amount to £5000.—2 Macgregor's Brit. Amer. and Almanack.

## CAPE BRETON

Is an island near the eastern continent of North America, lying between 45° and 47° of north latitude. It is separated from Nova Scotia by a narrow strait, called Causo, and is about 100 miles in length, and 50 in breadth. It is surrounded by little sharp-pointed rocks, separated from each other by the waves, above which some of their tops are visible. All its harbours are open to the east, turning towards the south. Except in the hilly part, the surface of the country has but little solidity, being every

where covered with a light moss and with water. The climate is very cold.

#### HISTORY AND CONSTITUTION.

Cape Breton was discovered by Sebastian Cabot, and afterwards by Verazani, who named it Isle du Cap. Fishermen had resorted to this island every summer, but the French, who took possession of it in 1713, were properly the first inhabitants. They gave it the name of Isle Royale, and fixed upon Port Dauphin as the place of their settlement. On account of the difficulty of approaching this place, the settlers subsequently changed to Louisbourg, the access to which was easier. The fortification of Louisbourg was not however begun till 1720. The island, which is the key to Canada, was attacked and captured by the English in 1745, restored to France by the treaty of Aix-la-Chapelle, and again attacked and captured in 1758. The possession of the place was confirmed to Great Britain by the peace in 1763. It was for some years much neglected, but after the first American revolutionary war, the British government turned their attention to the colonies that still remained in their possession, and Cape Breton received some degree of consideration. It was made a distinct colony from Nova Scotia, and its government was directed to be vested in a Governor and Council.

In 1820 it was re-annexed to Nova Scotia, and now sends two members to the General Assembly of that province. See more on the subject of this island, ante, and also Ency. Brit.; and 1 Macgregor's Brit. Amer.

#### PARTICULAR LAWS.

##### *Wills.*

32 Geo. 2, c. 11. An Act relating to Wills, Legacies, and Executors, and for the settlement and distribution of the estates of Intestates.

Sect. 1. Tenant in fee of lands (except infants, married women, or idiots,) may devise same by will signed by him or some other in his presence, and by his directions, before and attested by three witnesses.

2. Devise revocable only by another will or other writing, or by destruction thereof.

3. Nuncupative will of sum exceeding £30 bad, unless proved by three witnesses, and testator bid persons witness same as his will, and made it in his last illness, and where he dwelt for ten days before, except he was taken ill when at a place away from home, and died there.

4. After six months from speaking such will, no proof thereof to be received unless the words spoken were put into writing within six days after making same.

5. Probate of such will not to be granted till fourteen days after testator's death, nor till widow or next of kin cited.

6. Written will of personalty irrevocable by word of mouth, except it be proved by three witnesses that same was put in writing and allowed by testator.

7. Executor must, in thirty days after testator's death, prove and record his will, or present and renounce same, and thereupon administration may be granted to widow or next of kin, and on their refusal, to a creditor of the deceased.

#### *Debts.*

32 Geo. 2, c. 15. An act for making lands and tenements liable to the payment of Debts.

Sect. 1. When personal estate is insufficient to satisfy a judgment, execution may go against debtor's real estate.

#### *Frauds and Perjuries.*

32 Geo. 2, c. 18. An Act for preventing Frauds and Perjuries.

Sect. 9. Executions may be levied on trust estates in lands as of lands themselves.

10. Trust estates deemed assets by descent in the hands of the heirs.

15. Executions to bind personalty from delivery thereof to the officer, who must indorse thereon time of receiving the same.

#### *Statute of Limitations.*

32 Geo. 2, c. 24. An Act for Limitation of Actions, and for avoiding Suits at Law.

Sect. 1. Suits at law or in equity for lands to which any person has title, must be sued within twenty years after title first accrues.

2. No person may enter into lands after twenty years from their title first accruing.

3. Minors, married women, persons *non compos*, prisoners or absentees, when their title first accrues, may bring their action, or enter within ten years after their disability ceases.

*Rate of Interest.*

10 Geo. 3, c. 5. An Act for establishing the rate of Interest.

Sect. 1. The legal rate of interest to be £6 per cent. per annum, and securities reserving more declared void.

*Absent Proprietors.*

31 Geo. 3, c. 1. An Act in addition to and amendment of an Act made in the thirteenth year of his present Majesty's reign, intituled "An Act for making and levying the expenses attending the executing Writs of Partition."

If non-resident proprietor of lands divided by partition refuses or neglects to pay his share of the costs, the Supreme Court may direct a sale by public auction of sufficient part of his lands, and good conveyances thereof may be made by the sheriff of the county where the lands lie.

33 Geo. 3, c. 6. An Act in addition to and amendment of an Act<sup>(3)</sup> made in the fifth year of the reign of his present Majesty, intituled "An Act to enable the inhabitants of the several Townships in this Province (Halifax excepted) to cause any absent Proprietor of Lands within the same to pay a dividend or proportion of any county or town charge, to be assessed according to Law, and to bear their just proportion in repairing Highways, Roads, and Bridges within the said townships respectively."

Sect. 1. Where no person appears to pay taxes assessed on lands, or to perform highway labour for the same, and there are no goods thereon, justices of the peace may order such lands to be advertised to be let for three months; and if no person will give for one year's rent

(3) 5 Geo. 3, c. 5, which provides, that all non-resident proprietors of lands pay their quota of county and town charges for labour on highways,

or on default that one justice may let out such person's lands for payment thereof.



the amount of such arrears and costs, then the Supreme Court may direct a sale thereof, and conveyances to be executed by the clerk of the peace.

2. If the rents or purchase-money of such lands be more than sufficient, the surplus to be paid to the owner, and if unclaimed for three years, (it being previously paid to the treasury of the county or district where such lands are,) to be applied to public uses.

#### *Estates Tail.*

55 Geo. 3, c. 14. An Act to provide an easier method than is now used for barring Estates Tail in Land.

Sect. 1. Tenant in tail, as in England, may bar such entail by moving Supreme Court in term time for leave to acknowledge lease and release then produced conveying such lands, and for rule of court that the same may be enrolled therein for such purpose, and proving the instrument creating such entail; and court may take such acknowledgment, and cause entry thereof to be made, and may make a rule, that unless cause be shown before last day of ensuing term, the indentures be so enrolled; such rule to be duly advertised in the Royal Gazette at Halifax.

2. If sufficient cause against enrolling such indentures be not shown, they may be enrolled accordingly.

3. Such indentures from their enrolment to have effect of a common recovery, provided they be registered.

## PRINCE EDWARD'S ISLAND.

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THIS colony, formerly known as the Island of St. John, is situated in the gulf of St. Lawrence. It is twenty-two leagues long but hardly more than one league broad. It somewhat resembles the figure of a crescent, but with many indentations on both sides. The climate is severe, the coast good, the ports excellent. It has many fine and well-watered meadows, an extremely varied soil, capable of the culture of all sorts of grain, and it abounds with game and fish.

It was discovered by Sebastian Cabot upon St. John's day in the year 1497, after he had quitted Newfoundland, and was named by him the Island of St. John, in honour of the saint. The English however did not make any use of the discovery. The French, after having made a settlement in Canada, took possession of the island, and claimed it as their own in right of an alleged discovery by Verazani, who however had not visited the place till 1523. The claim, though manifestly ill-founded, was not disputed, for the island was not then deemed of much value and importance, and the French were allowed quietly to proceed with the settlement. Their efforts were ill-directed and unsuccessful. The Company of New France received a grant of it in 1619 from the Crown, but after many years of useless expense and labour they transferred their rights, in 1663, to some private individuals. It was never properly settled till 1749, when about 3000 inhabitants of Acadia passed over to the island, and being almost all agriculturalists, the colony soon began to flourish under their care. The government unwisely attempted to confine their labours to agriculture alone. It was made a dependency of the Royal Island (now called Cape Breton) which itself depended upon Canada. When taken possession of by the English they drove out the French inhabitants, amounting to nearly 3000 persons. It is

said (1) that the Count Egmont applied to Charles 2 to have the island granted to him on a feudal tenure, undertaking to furnish 1200 men for the defence of the colony, and to hold it as a fief from the Crown of England, provided he was allowed to grant it out upon the same conditions in arriere fiefs to other persons; that Charles would readily have agreed to these conditions, but that the Crown lawyers having declared that by the Act of Parliament recently passed, abolishing all feudal tenures, the possessions of the Crown in the New World were as much governed as the country at home, he was obliged reluctantly to refuse the offer. The island was therefore divided into allotments, which after some time were chiefly occupied by Scotch and Irish adventurers.

It shortly afterwards again returned into the possession of the French, by whom it was held until 1758, when it surrendered to Great Britain, and being ceded to the British Crown at the peace of 1763, it was, together with Cape Breton, annexed to the government of Nova Scotia. In 1768 the inhabitants addressed the Crown by petition, requesting that a separate and distinct government might be established in the island. The petition was favourably received, and in 1771 Walter Paterson, Esq. went out as Governor, provided with authority to convoke a House of Assembly. In 1773 the first House of Assembly met, and the colony is now governed, like the rest of the British possessions in North America, by acts passed by the Governor, Council, and Assembly, and confirmed at home. The inhabitants of the island distinguished themselves by their loyalty during the American revolutionary war, and the Duke of Kent having afterwards repaired some of the injury which they had suffered during the contest, and performed other acts that gave him a deserved popularity among them, they testified their good will towards his Royal Highness by passing in the year 1799 a Colonial Act of Assembly (38 Geo. 3, c. 1,) by which, in honour of his Royal Highness, the name of the island was changed from that of the Island of St. John to Prince Edward's Island. Charlotte Town is the capital of the colony.—See 8 Raynal's East and West Indies, 243, 245, and 1 M'Gregor's Brit. America, 353, 366.

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(1) 8 Rayn. E. and W. Ind. 244.

## LAWS. (2)

The laws of the island must be the laws of England in force at the time of its acquisition, (so far as they are applicable to the colony,) the laws of Nova Scotia so far as they have not been altered or repealed since the island became subject to a distinct government, and the acts passed in its own Assembly since that period.

## COURTS.

There is a Supreme Court of Judicature exercising the powers of the Court of King's Bench and Common Pleas in England, where the law is administered by one chief justice and two puisne judges. The interests of the Crown are protected by an Attorney and Solicitor-General. There are also justices of the peace with powers similar to those exercised by such persons in England.

*Wills.*

By the Colonial Act, 21 Geo. 3, c. 2, lands may be devised by will in writing, subscribed by the testator, or by another person in his presence and by his authority, and attested by three witnesses. And such wills cannot be revoked but by a subsequent will similarly executed.

A nuncupative will "where the estate bequeathed" exceeds the value of £30, is bad, unless proved by the oath of three witnesses, and unless it be proved that the testator, at the time of pronouncing the same, desired the persons present to bear witness that such was his will, and unless it was made in his last illness. No proof of such will can be received after the expiration of six months, unless the testimony was put into writing within six days after the making of the will.

*Debt.*

In default of personalty, lands are made liable to the payment of debts by the 26 Geo. 3, c. 9, but by the 35 Geo. 3, c. 8, lands levied upon are not to be sold within

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(2) See ante, p. 3 to 16, on the topic how far the colonies are subject to the law of the mother country.

two years after the levy. By the 59 Geo. 3, c. 7, leasehold interests may be sold within six months.

### *Insolvent Debtors.*

The court, or any two justices thereof, may order a part, or if necessary the whole of an insolvent's realty and personalty, to be assigned to his creditors, and may then discharge him. The assignees must then pay the fees of the imprisonment, and divide the remaining part of the produce of the property among the creditors.

### *Conveyances of Real Estates.*

These when made by married women, by deed jointly with the husband, are, by 36 Geo. 3, c. 3, declared to be equivalent in effect to the levying of a fine in England, provided that the woman acknowledge the same as her free act and deed before a judge of the Supreme Court of Justice or a justice of the peace, and the acknowledgment be by him certified on the deed. By the 59 Geo. 3, c. 9, estates tail may be barred in the same manner if the deeds are duly registered.

Letters of attorney, under the authority of which deeds of sale or conveyances are, by 49 Geo. 3, c. 4, to be made, must be registered at length in the registrar's office, and are to have no effect till so registered.

A feme covert may, under the Colonial Act, 1 Geo. 4, c. 1, acknowledge a deed of lands for barring dower, if in the United Kingdom or any British colony, before a judge of a Court of Record, Master in Chancery, or Justice of the Peace. If taken in the United Kingdom, the acknowledgment must be authenticated by the usual affidavit and certificate, under the seal of a public notary, and if in any British colony, by a certificate under the hand and seal of the Governor; or if the married woman live in any foreign kingdom, the acknowledgment may be taken before any minister, ambassador, or consul from the United Kingdom, and certified under his hand and seal, and in any such case shall be registered with the deed of conveyance, and shall be an effectual bar to her right of dower.

## AFRICAN COLONIES.

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### CAPE OF GOOD HOPE.

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THE colony of the Cape of Good Hope stretches along the whole of the southern extremity of Africa, from the Cape of that name (originally called Cabo dos Tormentos, the Cape of Storms, by the Portuguese,) to the Great Fish River, or from  $17^{\circ} 36'$  to  $28^{\circ} 17'$  east longitude, and lies between  $29^{\circ} 55'$  and  $34^{\circ} 17'$  south latitude. Its most western point is at the mouth of the Koussie River, which, with Bosjesman's country, forms the northern boundary of the colony. On the west and south it is bounded by the Atlantic and Indian oceans, and on the east by Caffre land. Its mean breadth from west to east is about 550 miles, from north to south, about 223 miles. Cape Town is the capital.—Account of the Cape of Good Hope, London, 1819, p. 3.

The air is on the whole salubrious. The predominant soils of the country are a stiff clay, into which no plough will enter until it is thoroughly soaked with rain, and a light red sand, capable of extreme fertility wherever it is sufficiently irrigated.

The geographical position of the Cape is very commanding. Its distance from the coast of Brazil is a month's voyage, and from British Guiana a voyage of six weeks. It is equally distant from the Red Sea, and within two month's voyage from Coromandel and Malabar.

The colony at the Cape comprehends at least 120,000 square miles. Its climate is temperate, and its natural productions numerous and abundant.—Cape Almanack for 1831.

#### HISTORY AND CONSTITUTION.

The colony surrendered to Great Britain in 1795. The powers of government that had previously been exercised

by the Governor and Council were then vested in the British Governor alone. It was ceded in 1803 to the Batavian Republic. It was again captured in 1806. From 1814 the sole authority was again vested in the English Governors. They exercised an appellate jurisdiction over all causes where the amount exceeded £200 or 1000 rix dollars. Up to 1812 the lands had been held on the conditions of a loan-tenure, (1) but in that year it was directed that a permanent interest in the lands should be given to the settler.

#### COURTS. (2)

There were a President and members of the Courts of Justice, President and members of the Burgher Senate, and Landdrosts and Heemraaden of districts. This system was changed, so far as related to the Supreme Court, by the Charter of Justice granted in 1827, and again by the Charter of Justice of the 4th of May, 1832. (See post.)

All the judicial officers, except the Judges of the Supreme Court and His Majesty's Fiscal, hold their appointments during the Governor's pleasure.

(1) The tenures of land are various. The most ancient tenure is that of what are called loan lands, or certain farms granted to the early settlers at an annual rent of twenty-four rix dollars. It is a kind of lease in perpetuity, the payment of the rent being held to be a constant renewal. Three farms are calculated to contain exactly nine square miles; the number of them in the whole colony is about 2000.

Gratuity lands are a customary copyhold and pay about the same rent as the loan farms. They are supposed to have been granted as marks of favour, and are chiefly in the neighbourhood of the Cape, and in better state of cultivation than the loan farms.

The quit rents are the produce of pieces of waste land generally lying contiguous to an estate, for which the owner pays annually at the rate of a shilling an acre, under a lease granted to him for fifteen years.

The freehold estates are grants of about 120 English acres each, which were made to the original settlers; they lie chiefly round the Cape, and

contain the best land of the colony.—  
Account of South Africa.

(2) It is much to be regretted that that part of the Report of the Commissioners of Inquiry which related to the administration of justice in this colony has not been printed. From the other portions of the report, those upon the trade and finances of the Cape, the following notices have been extracted. Mr. Barrow's account of Southern Africa, smaller publications on the same subject, and the Cape Almanack have also been consulted. The Report of the Commissioners upon the administration of the law in the colony must have been, judging from the other portions of their labour, a most valuable document. It was taken under the following instructions given in January, 1823:—

“The judicial inquiry will embrace the whole system and administration of civil and criminal justice, including the conduct and regulation of the police, and the jurisdiction, separate and concurrent, of the Courts of Admiralty.”

The chief administrative officers under the Governor are the Landdrost and Heemraaden. The nature of their powers and duties will appear in the following sketch taken from the Commissioners' Report:—

The Cape of Good Hope is divided into four districts, over each of which is placed a civil magistrate called a Landdrost, who with six Heemraaden or a Council of Country Burghers is invested with powers to regulate the police of his district, superintend the affairs of government, adjust litigations, and determine petty causes. The decisions of these magistrates are, however, subject to an appeal to the Court of Justice in Cape Town.—1 Barr. Account of South Africa, 12.

#### *Landdrost.*

The Landdrost executes the orders of the executive government, and is armed with very extensive powers of police. In these duties he is assisted by Field Cornets, who are selected from among the most respectable inhabitants of the several subdivisions of the district, and upon the recommendation of the landdrost are appointed by the Governor. Instructions for the guidance of the landdrosts were drawn up in 1803, under the administration of General Janssens, were approved by the Batavian government, and have since been adopted, with alterations introduced by regulations promulgated by British Governors. They contain the rules by which the affairs of the several districts of the colony are administered by them in the several departments of justice and police, and in collecting and disbursing the local revenues.

#### *Heemraaden.*

The number of the Heemraaden have varied according to the population and extent of each district, not being less than four, and not exceeding eight. From the great extent of some of the districts it has been found necessary to establish sub-drostdies, differing in no respect from the constitution of the larger divisions except in being responsible to the landdrosts and heemraaden for the collection and appropriation of the local taxes.

At Simon's Town the officer who is in military command of the station has been appointed Government Resident,



and latterly three heemraaden have been appointed to assist him in the duties, which in every respect are those of a landdrost. At Port Elizabeth and at Port Frances two magistrates have been recently appointed, with a limited jurisdiction over slight offences and in matters of police.

The original appointment of the heemraaden is made by the Governor; the two senior members of each board retire annually, and the landdrost and remaining members name four persons, out of whom two are appointed by the Governor to succeed. The retiring members are re-eligible; and the requisite qualifications consist of the occupation of an estate on loan within the district, or the possession of certain immoveable property at the drostdy or seat of the district magistrature, having attained thirty years of age, and having resided three years in the district.

In conjunction with the landdrost, and under his presidency, the heemraaden hold monthly meetings for the transacting the civil and criminal business of the district, and auditing the expenditure. They have also weekly meetings in their judicial capacities, at which cases are heard and decided, or preliminary informations taken. Extraordinary meetings are held for the annual receipt of taxes, or for the trial of civil causes, for which a daily allowance is made to the members.

The landdrost and heemraaden are assisted in the performance of their administrative and judicial functions by the district secretaries, who are appointed by the Governor. They frequently unite with their office that of vendue master, or superintendent of auction sales in the district; and all have an exclusive privilege to act as notaries and to keep registers of wills, acts, and legal instruments drawn by them, and executed in their presence by the inhabitants of the district.

There has been no regular form observed in the construction or promulgation of the laws. The enactment of new laws or the modification of old ones has been announced to the public under the various forms of notices, orders, circular letters to the landdrosts, advertisements, minutes, and lastly of ordinances. A commission was appointed in the year 1819 to make a compilation of all the proclamations that were published by Dutch or British

authority, and eight volumes in manuscript have been collected, and a digest of the contents is in preparation.

A collection of the proclamations and orders that were considered to relate to the administration of justice in the country districts was printed and distributed among the landdrosts. It was not however complete.

The commissioners (in 1826) recommended that the whole territory of the Cape of Good Hope, which is now subject to His Majesty's dominion, should be separated into two provinces, (3) to be called the Western Province and the Eastern Province. The free population of the first they stated might be estimated at 45,014, and the slaves at 28,934; that of the latter at 39,513, and the slaves at 6,575.

The chief justice is required to certify that the laws and ordinances that may be passed by the Governor in Council contain nothing that is inconsistent with the laws of the colony, or with that part of the law of England which is in force here.

The Burgher Senate originated in the appointment of two persons by Commissioner Van Goens, in the year 1657, to deliberate in criminal matters and to assist in the trial of freemen, as contradistinguished from those who were in the service of the Dutch East India Company. In the following year this number was increased to four, under the appellation of "Burgher Raaden," or Burgher Council, and their jurisdiction was extended to civil causes. They continued to exercise these functions until 1784, when a Court of Justice was established, composed of a President, who was a member of the Council of Policy, and twelve members, six of whom were servants of the Dutch East India Company, and six were members of the Burgher Senate, who were made permanent. They continued to exercise their share of the judicial functions until the courts were remodelled in 1792 by the Dutch government. They have since formed a kind of Administrative Council.—Rep. Commissioners of Inquiry into the Administration of Government at the Cape of Good Hope, House of Commons' Papers, May, 1827, No. 282.

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(3) This recommendation is now carried into effect. See the Charter of Justice, post, 483.

*Cape Town.*

Six burghers constitute a senate for the government of the town. Their functions are similar to those of our aldermen. They mediate between the boors of the country and the tradesmen of the town. They have not the power of inflicting any punishment, but report crimes and misdemeanors to the fiscal, who is mayor of the place and Attorney-General of the colony.—An Account of the Cape.

## COURTS.

The only members of the Court of Justice at the Cape, who had any professional education, at the time of the commissioners' inquiry, were the fiscal and the secretary. The jurisdiction of the court extended to the trial of offences committed by the military. In all such cases, however, the Governor, as commander-in-chief, had the power of nominating two military officers to sit on the trial and give their votes with the ordinary members. The decision was by the majority of votes. Two of the members in turn formed a monthly commission, before which written evidence was produced by the attorneys of the parties and every information collected against the full meeting of the court, which was held once a fortnight. All suits under £40 were decided in an inferior court, called the Court of Commissaries for trying Petty Causes. In the country districts the landdrost and heemraaden were empowered to give judgment in all cases where the damages to be recovered did not exceed £30. The Court of Commissaries was also a court for matrimonial affairs (4) and consisted of a President and Vice-President and four members, whose situations were merely honorary and their appointments biennial. It granted licenses for marriage where, on examination of the parties, there appeared to be no legal impediment. If either of the parties had been married before and had children, a certi-

(4) Mr. Barrow (vol. i. p. 252,) mentions, as in force in his time, an absurd law by which the parties intending to marry were obliged to be present at the Cape, in order to answer certain interrogatories and pass the forms of office there, the chief intent of which was to see that no im-

proper marriage took place. Of course the journey was purely vexatious, for the consummation frequently preceded the ceremony, which was never refused, at least if the man, after having satisfied his passion, was still ready to perform his promise.

ificate was produced from the Secretary of the Orphan Chamber, or from the notary appointed to administer the affairs of the children, that the laws of the colony relating to inheritance had been duly complied with.

The Weeskammer, or Orphan Chamber, for managing the effects of minors and orphans, was one of the original institutions of the colony, and was modelled on those establishments of a similar kind that are still found in every city and town of Holland.

The Orphan Chamber consisted of a president, four members, a secretary, and several clerks. Their emoluments arose from a per centage of  $2\frac{1}{2}$  per cent. on the amount of all property coming under their administration, and from sums of money accruing from the interest of unclaimed property, and the compound interest arising from the unexpended incomes of orphans during their minority.—2 Barrow's Account of Southern Africa. This chamber is now abolished, see the Charter of Justice, post, 483.

By their laws of property the estates and moveables of two persons entering into matrimony became a joint stock, of which each party had an equal participation, and on the death of either the children were entitled to that part of the joint stock which belonged to the deceased, unless it was otherwise disposed of by will, which was only permitted under certain restrictions and limitations.

A "Supreme Court of the colony of the Cape of Good Hope" has been established by charter (see post.) The salary of the Chief Justice is stated in the Cape Almanack to be £2500, that of the Puisne Judges £1500 each:

#### *Insolvent Law.*

Ordinance 64, passed August 6th, 1829.

Sect. 4. Any person departing, or remaining absent from the colony, or departing from his dwelling, or otherwise absenting himself with intent to defeat or delay his creditors, or not satisfying a sentence, or not pointing out sufficient property for its satisfaction, or when sufficient cannot be found, or making any fraudulent alienation, transfer, gift, cession, delivery, mortgage, or pledge of any of his effects, shall be considered insolvent.

16. Creditors of a company may petition against all, or one, or more of the partners; but this is not to prevent the creditors of a company from proceeding against any partner thereof in respect of debts due by such company.

19. Orders for sequestration are to be forthwith lodged at the sheriff's office for registration; whereupon the master, if the order has been made at the instance of creditors, shall cause the same to be notified in the Gazette, and the insolvent is then to lodge with the master a list of the names and places of abode of his creditors.

24. Petitioning creditors may, on obtaining orders for sequestration, cause the debtor to be summoned before the Supreme Court, to show cause why his estate should not be sequestered.

26. In case of unfounded, vexatious, or malicious petitions, the court may, on proof, award damages, or leave the party to his action.

29. After order for sequestration, all judgments shall be stayed, but creditors may in such cases prove for both debt and costs; and property attached, but not sold, shall be placed under sequestration, and the person holding the judgment shall be entitled to such preference over the proceeds as by law is created over such property in virtue of the attachment.

30. After order for sequestration, all pending actions for debt shall be stayed, and the plaintiff may prove for both debt and costs.

35. In cases of mutual credit the balance only shall be proved or paid on either side.

38. No person whose debt depends upon a contingency or condition, shall be entitled to petition or vote in the choice of trustees or otherwise, so long as the contingency shall not happen or the condition shall not be performed.

39. In case of absence of a claimant from the colony, or in any other case where the court is of opinion that the debt can eventually be proved, it may allow such claim to be entered on the proceedings, give reasonable time for proof, and make an order for securing the amount, in case of its being afterwards established.

43. Creditors may vote by agents duly authorized.

91. Any agreement, &c. made by an insolvent in order to obtain the signature of creditors, is null and void.

93. A trustee becoming insolvent, and being indebted to the estate for which he was trustee, shall not be discharged therefrom by obtaining his certificate.

#### *Sheriff.*

The office of high-sheriff was originally created on the

1st January, 1828, under the provisions of the royal charter for the better and more effectual administration of justice in this colony. It is now subject to the regulations contained in the last charter. (See post.) The sheriff's duty is to carry into execution all the sentences and decrees of the Supreme or Circuit Courts. For this purpose he is directed to appoint a deputy-sheriff for each of the country districts throughout the colony, for whose conduct in all their official duties he is responsible, and who act in the same manner in their several districts as is done by the high sheriff at Cape Town, and transmit to the head office the amount of levies made by them.

By rule 143, sec. 4, "It is ordered by the court that the sheriff shall, on the first day of every term, exhibit to the court, on oath, a statement of all his receipts and payments by virtue of his said office during the quarter of a year next preceding the same term, and specifying in such statement what sums then remain in his hands, and on what account, and for whom the same were received by him, and thereupon the said sheriff shall be entitled to and shall receive a certificate thereof.

"The said statement shall be filed with the master, and it shall be permitted to any attorney of this court, at all reasonable times, to inspect the same and to take extracts therefrom without fee."

#### *Court of Vice-Admiralty.*

This court consists of one Judge, who is generally the Chief Justice of the colony.

#### *Police Court.*

This court is held before the Judge of Police and Resident Magistrate of Cape Town and the Cape District. The salary is £800.

#### *Recovery of Small Debts in the Cape District.*

To recover any sum under £20 recourse must be had to the Court of the Judge of Police in Cape Town, or to that of the Resident Magistrate in the country.

It is at the option of the magistrate, if the evidence be defective, to examine either plaintiff or defendant on oath.

When judgment has been given, a warrant is handed

over to the messenger, which he is bound to execute on the defendant, if resident in town, within twenty-four hours.

*Matrimonial Court for Cape Town and Cape District.*

The Judge of Police is generally the Judge of this court.

The Matrimonial Courts in the country districts are composed of the Resident Magistrate and the Clerk of the Peace, where these officers exist, and where there is no Clerk of the Peace, of the Resident Magistrate and his clerk only.



*Extract from Patents of the Second Year of the Reign of King William the Fourth.*

CHARTER FOR SUPREME COURT OF JUSTICE AT THE CAPE OF GOOD HOPE.

WILLIAM the FOURTH, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith. To all to whom these presents shall come greeting: Whereas it is expedient to make provision for the better and more effectual administration of justice in our colony of the Cape of Good Hope, and in the several territories and settlements dependent thereupon, and for that purpose to constitute within our said colony and its dependencies one Supreme Court of Justice, to be holden in the manner and form hereinafter mentioned. Now know ye, that we of our special grace, certain knowledge, and mere motion, have thought fit to grant, direct, order, and appoint, and by these presents do accordingly for us, our heirs and successors, grant, direct, order, and appoint, that there shall be within our said colony of the Cape of Good Hope a Court, which shall be called "The Supreme Court of the Colony of the Cape of Good Hope." And we do hereby create, erect, and constitute the said Supreme Court to be a Court of Record. And we do further will, ordain, and appoint, that the said Supreme Court of the colony of the Cape of Good Hope shall consist of and be holden by and before one Chief Justice and two Puisne Judges, and that the said Chief Justice shall be called and known by the name and style of "The Chief Justice of the Colony of the Cape of Good Hope;" and which said Chief Justice and Puisne Judges shall be respectively barristers in England or Ireland, or advocates admitted to practise in our Courts of Session of Scotland, or in the said Supreme Court. And which said Chief Justice and Puisne Judges shall from

time to time be nominated and appointed to such their offices by us, our heirs and successors, by letters-patent under the public seal of the said colony, to be issued in pursuance of any warrants or warrant, to be from time to time for that purpose granted by us, our heirs and successors, under our or their sign manual. And we do hereby declare, ordain, and grant, that upon the death, resignation, sickness, or incapacity of the said Chief Justice or any of the said Puisne Judges; or in the case of the absence of any of them from the said colony, or in case of any such suspension from office as hereinafter mentioned, of any such Chief Justice or Puisne Judge, it shall and may be lawful to and for the Governor of our said colony for the time being, by letters-patent, to be by him for that purpose made and issued under the public seal of the said colony, to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such Chief Judge or Puisne Judge so dying or resigning, or labouring under such sickness or incapacity as aforesaid; or being so absent as aforesaid from the said colony, or being so suspended, until the vacancy or vacancies so created by any such death or resignation, or sickness, or incapacity, or absence, or suspension, shall be supplied by a new appointment, to be made in manner aforesaid by us, our heirs and successors, or until the Chief Justice or Puisne Judge so becoming sick, or incapable, or being absent, or suspended as aforesaid, shall resume such his office, and enter into the discharge of the duties thereof. And we do further will, ordain, and grant, that the said Chief Justice and Puisne Judges shall hold such their offices during their good behaviour. Provided nevertheless, that it shall and may be lawful for the Governor of our said colony for the time being, by any order or orders to be by him for that purpose made and issued under the public seal of the said colony, with the advice of the executive council of government of the said colony, or the major part of them, upon proof of the misconduct of any such Chief Justice or Puisne Judge as aforesaid, to suspend him from such his office and from the discharge of the duties thereof, provided that in every such case the said Governor shall immediately report for our information, through one of our Principal Secretaries of State, the grounds and causes of such suspension. And we do hereby reserve to us, our heirs and successors, full power and authority to confirm or disallow such suspension from office as aforesaid of any such Chief Justice or Puisne Judge. And we do hereby further reserve to us, our heirs and successors, full power and authority, upon sufficient proof to our or their satisfaction of any such misconduct, to remove and displace any such Chief Justice or Puisne Judge from such his office. And we do hereby give and grant to our said Chief Justice for the time being rank and precedence above and before all our subjects whomsoever within the said colony of the Cape of Good Hope and the territories and places dependent thereupon, excepting the Governor or Lieutenant-Governor for



the time being thereof, and the Commander-in-chief of our forces for the time being within the same, and excepting all such persons as by law or usage in England take place before our Chief Justice of our Court of King's Bench. And we do hereby give and grant to the said Puisne Judges for the time being rank and precedence within our said colony of the Cape of Good Hope and the territories and places dependent thereupon, next after our said Chief Justice of our said colony for the time being. And we do hereby declare, that the said Puisne Judges shall take rank and precedence between themselves according to the priority of their appointments respectively. And we do further grant, ordain, and appoint, that the said Supreme Court of the colony of the Cape of Good Hope shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms within an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of the Cape of Good Hope." And we do hereby ordain, grant, and appoint, that the said seal shall be delivered to and shall be kept in the custody of the said Chief Justice, with full liberty to deliver the same to any Puisne Judge of the said court for any temporary purpose; and in case of vacancy of or suspension from the office of Chief Justice, the same shall be delivered over to and kept in the custody of such person as shall be appointed by the said Governor of our said colony to act as and in the place and stead of the said Chief Justice. And we do further grant, ordain, and declare, that the said Chief Justice and the said Puisne Judges, so long as they shall hold their offices respectively, shall be entitled to have and receive such salaries as shall be granted to them by us, our heirs and successors, which salaries shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantages other than and except the said salaries shall be accepted, received, or taken by any such Chief Justice or Puisne Judge on any account or any pretence whatsoever. And we do further ordain, appoint, and declare, that no such Chief Justice or Puisne Judge as aforesaid, shall accept, take, or perform any other office, place of profit or emolument within our said colony; and that the acceptance of any such other office or place as aforesaid, shall actually vacate and avoid such his office of Chief Justice or Puisne Judge, as the case may be, and the salary thereof shall cease accordingly from the time of the acceptance of any such other office or place. And we do hereby ordain, appoint, and declare, that there shall be attached and belong to the said court the following officers (that is to say), one officer to be styled the Registrar or Prothonotary and Keeper of Records of the said Court, and one other officer to be styled the Master thereof, together with such and so many other officers as the Chief Justice of the said court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are

granted and committed to the said court by these our letters-patent. Provided nevertheless, that no new office shall be created in the said court, unless the Governor of the said colony or Lieutenant-Governor for the time being shall first signify his approbation thereof to the said Chief Justice for the time being in writing under the hand of such Governor or Lieutenant-Governor. And we do further ordain and direct, that all persons who shall and may be appointed to the offices of Registrar or Prothonotary and Keeper of Records or Master of the said court, and that all persons who shall be appointed in the said court to any offices of which the duties shall correspond to those performed by the Master or Prothonotary of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs and successors, by warrant under our or their royal sign manual; and that all persons who shall and may be appointed to any other office within the said Supreme Court, shall be so appointed by the Governor for the time being of the said colony. And we do further direct and appoint, that the said several officers of the said court other than and except the said Chief Justice and Puisne Judges thereof, shall hold their respective offices therein during the pleasure of us, our heirs and successors. And we do hereby authorize and empower the said Supreme Court of the colony of the Cape of Good Hope to approve, admit, and enrol such persons as shall have been admitted as barristers in England or Ireland, or advocates in the Court of Session of Scotland, or to the degree of doctor of laws at our Universities of Oxford, Cambridge, or Dublin, to act as barristers or advocates in our said Supreme Court. And we do further authorize and empower the said Supreme Court to admit any persons to practise as barristers and advocates therein, who previously to the promulgation of these presents within the said colony have been actually admitted to practise as advocates in the Supreme Court of Justice heretofore existing within the same. And we do further authorize and empower the said Supreme Court to approve, admit, and enrol, any persons being attornies or solicitors of any of our Courts of Record at Westminster or Dublin, or being proctors admitted to practise in any Ecclesiastical Court in England or Ireland, or being writers to the signet in Scotland, or being now entitled to practise as proctors or notaries in the said Supreme Court of Justice heretofore existing within the said colony, to act as attornies, solicitors, or proctors, in the said Supreme Court of the colony of the Cape of Good Hope. And we do further authorize our said Supreme Court to approve, admit, and enrol, as such attornies, solicitors, or proctors as aforesaid, such and so many persons as may be instructed within our said colony in the knowledge and practice of the law, by any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said court, and which persons shall be so approved, admitted, and enrolled according to and in pursuance of any general rule or rules of court to be for that purpose

made in manner hereinafter directed. And we do ordain and declare, that persons approved, admitted, and enrolled as aforesaid, shall be and they are hereby authorized to appear and plead and act for the suitors of the said Supreme Court, subject always to be removed by the said Supreme Court from their station therein upon reasonable cause. And we do further ordain, that no person or persons whatsoever not so approved, admitted and enrolled as aforesaid, shall be allowed to appear, plead, or act in the said Supreme Court for or on behalf of any suitors in the said court. Provided always, and we do further ordain and declare, that the functions and office of barristers and advocates shall not be discharged in the said court by the attornies, solicitors, and proctors thereof; and that the functions and office of such attornies, solicitors, and proctors, shall not be discharged by such barristers at law or advocates. Provided nevertheless, and we do further declare our will to be, that in case there shall not be a sufficient number of barristers and advocates within the said colony competent and willing to act for the suitors of the said court, the said court shall and is hereby authorized to admit any of the attornies, solicitors, or proctors thereof, to appear and act as barristers and advocates during the time of such insufficiency only; and in case there shall not be a sufficient number of attornies, solicitors, and proctors within the said colony competent and willing to appear and act in that capacity for the suitors of the said court, the said Supreme Court shall and is hereby authorized to admit any of such barristers or advocates to practise and act in the capacity of attornies, solicitors, and proctors, during the time of such insufficiency only. And we ordain and declare, that the Governor for the time being of the said colony of the Cape of Good Hope shall, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as and be the Sheriff for our said colony of the Cape of Good Hope and its dependencies for the year ensuing, which Sheriff, when appointed, shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath faithfully to execute the duties thereof, and the oath of allegiance before the said Governor, who is hereby authorized to administer the same. And we do direct, that the said Sheriff shall continue in such his office during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such Sheriff shall die in or resign his said office, or depart from our said colony of the Cape of Good Hope during the period of his office, then another person shall as soon as conveniently may be after the death, resignation, or departure of such Sheriff, be in like manner appointed and sworn as aforesaid, and shall continue in his office for the remainder of the year, and until another Sheriff shall be duly appointed and sworn into the said office. And we

do further order, direct, and appoint, that the said Sheriff for the time being shall, by himself or his sufficient deputies, to be by him appointed and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute, and the said Sheriff by himself and his said deputies are hereby authorized to execute, all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of the Cape of Good Hope, or of the Circuit Courts of the said colony hereafter mentioned; and shall make a return of the same, together with the manner of the execution thereof, to the Supreme Court of the Cape of Good Hope, or to the said Circuit Courts, as the case may be; and shall receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the Supreme Court of the Cape of Good Hope, or by the said Circuit Courts, or by the Chief Justice, or by any other judge of the said courts. And we do further authorize our Governor for the time being of the said colony of the Cape of Good Hope in each succeeding year to re-appoint the same person to fill the office of sheriff, if it shall appear to our said Governor expedient so to do. Provided nevertheless, and we do hereby require our said Governor in the selection of any person to fill the said office of Sheriff of the Cape of Good Hope, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs and successors, through one of our or their Principal Secretaries of State. And we do further direct, ordain, and appoint, that whenever the said Supreme Court of the Cape of Good Hope, or the Circuit Courts hereinafter mentioned, shall direct or award any process against the said Sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties or any of them, or by reason of any good cause of challenge which would be allowed against any Sheriff in England, cannot or ought not by law to execute the same, in every such case the said Supreme Court of the colony of the Cape of Good Hope, or the said Circuit Courts, as the case may be, shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said courts respectively. And we do hereby further ordain, direct, and appoint, that the said Supreme Court of the colony of the Cape of Good Hope shall have cognizance of all pleas and jurisdiction in all causes whether civil, criminal, or mixed, arising within the said colony, with jurisdiction over our subjects and all other persons whomsoever residing and being within the said colony, in as full and ample manner and to all intents and purposes as the Supreme Court of Justice now existing within the said colony now hath or can lawfully exercise the same. And we do further give and grant to the said Supreme Court of

the colony of the Cape of Good Hope full power, authority, and jurisdiction, to apply, judge, and determine upon, and according to the laws now in force within our said colony, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof by us, our heirs and successors, with the advice and consent of Parliament, or in our or their privy council, or by the Governor of the said colony, by the advice of the legislative council of government thereof. And we do further give and grant to the said Supreme Court full power, jurisdiction, and authority, to review the proceedings of all inferior courts of justice within our said colony, and if necessary to set aside or correct the same; and in the exercise of such jurisdiction, powers, and authorities as aforesaid, our will and pleasure is, that the pleadings and proceedings of the said Supreme Court and the said Circuit Courts shall be carried on, and the sentences, decrees, judgments, and orders thereof, pronounced and declared in open court, and not otherwise, and that the several pleadings and proceedings of the said courts shall be in the English language; and that in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *vivâ voce* and in open court. And we do further will, direct, and appoint, that for the conduct and decision of all civil suits, actions, and causes depending before the said Supreme Court, and of all questions, matters, and things arising in the course of any such civil suits, actions, or causes, any two of the judges of the said Supreme Court shall form a quorum, and shall be competent to execute all and every the powers, jurisdictions, and authorities hereby granted to and vested in the said Supreme Court; and that in the event of any difference of opinion between such two judges, the decision of the said court shall in any such case be suspended until all the three judges shall be present, and the decision of such three judges when unanimous, or of the majority of such three judges in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole court. And we do further ordain, direct, and appoint, that in any criminal case depending before the said Supreme Court the trial of the person or persons accused shall be before any one or more of the judges of the said court and a jury (5) of nine men, who shall concur in every verdict to be given on

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(5) The following was the jury law of the colony under an ordinance issued in pursuance of the charter of 1827.

“Ordinance of his Honour the Lieutenant-General in Council for determining the qualification of persons to serve on grand and petit juries, and the mode of making out and

returning lists of the same.” Passed February 4, 1828.

Sect. 1. Whereas by His Most Gracious Majesty's charter, bearing date the 24th day of August, 1827, it is ordained, directed, and appointed, that in any criminal cause depending before the Supreme Court of this colony, the trial of the party or parties

the trial of any such accused party or parties; and every such verdict shall be delivered in open court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury before they are discharged from attendance on the said court, Provided nevertheless, and we do further declare and direct, that no person within the said colony who may be otherwise competent to serve on any such jury as aforesaid, shall be or be taken to be incompetent to serve on such

accused shall be before one or more of the judges of the said court and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties. And whereas by the said charter it is also directed, that all crimes and offences cognizable in the Circuit Court of this colony, shall be inquired of, heard, and determined by the Circuit Judge and a jury of nine men, unless upon the trial of any crime or offence before any of the said Circuit Courts nine good and lawful men, being duly summoned, shall not appear to form a jury, then and in all such cases such trial shall be had before the judge and any number of the jury who shall appear, not being less than six, who shall be sworn, and shall have the same power as if the usual number of nine had appeared: now, therefore, in pursuance to the powers and directions aforesaid in the said charter contained, be it enacted by his Honour the Lieutenant-Governor in Council, that from and after the passing of this ordinance, every man, except as hereinafter excepted, between the ages of 21 and 60 years, residing within the colony and its dependencies, who shall have the possession of any land situated within this colony, held on perpetual quit-rent or on loan, and for which he is liable to pay an annual rent of not less than one pound seventeen shillings and sixpence sterling, or of freehold land of the same annual value, or who shall be liable to pay in Cape Town and the district thereof a sum not less than twenty shillings sterling, and in any and every other part of this colony a sum not less than fifteen shillings sterling for or on account of taxes already imposed or hereafter to be imposed by any law or ordinance, shall be qualified and shall be liable to

serve on juries in all criminal cases in the Supreme and Circuit Courts, such cases being triable in the district respectively in which every man so qualified shall reside.

2. Provided always, and be it further enacted, that all judges of the Supreme Court, all clergymen in holy orders, all priests of the Roman Catholic faith, all persons licensed to teach or preach in any congregation assembled for religious worship, all attorneys and proctors duly admitted by the Supreme Court or Court of Vice-Admiralty, and actually practising, all officers of any courts of superior or inferior jurisdiction, exercising the duties of their respective offices, all gaolers and keepers of houses of correction, all persons duly admitted to practise as physicians, surgeons, or apothecaries, and actually practising, all officers in his Majesty's army and navy on full pay or in active employment, all persons employed in the civil service of his Majesty's government in this colony, and all field-cornets, sheriffs' officers, constables and clerks, shall be and are hereby absolutely freed and excepted from being returned and from serving upon any jury whatsoever.

7. And be it further enacted, that no person shall be put on trial on any indictment at any criminal session of the Supreme Court, unless the bill shall first have been presented to a grand jury, and shall have been returned by them a true bill.

8. And be it further enacted, that every such grand jury shall consist of not more than seventeen men, and not less than nine men, between the ages of 21 and 60 years, of good fame and condition, possessing property in land or houses within Cape Town of the value of £2000 sterling.

jury by reason of his ignorance or supposed ignorance of the English language. And we do further ordain and direct, that all the duties heretofore performed by the Orphan Chamber within our said colony, shall henceforth be performed by the Master for the time being of the said Supreme Court, and that the said Orphan Chamber shall be and the same is hereby abolished. And we do further direct and appoint, that the said Supreme Court shall at all times be holden at Cape Town in our said colony. And we do further ordain and direct, that it shall and may be lawful for the Governor of the said colony by any proclamation or proclamations, to be by him for that purpose issued, to apportion and divide the said colony into two or more districts, and to fix and ascertain the boundaries and limits of every such district, and such boundaries and limits from time to time to alter as occasion may require. Provided always, that such apportionment of the said colony into such districts as aforesaid be made in such manner as to such Governor may appear to be best adapted for enabling the inhabitants of the said colony to resort with ease and convenience to the Circuit Courts to be therein established as after mentioned. And we do further grant, ordain, and appoint, that courts to be called Circuit Courts shall be holden twice at the least in each year in each of the districts into which the said colony may be so divided as aforesaid, and each of the said Circuit Courts shall be holden by the Chief Justice, or by one of the said Puisne Judges of the said Supreme Court of the colony of the Cape of Good Hope, at such times and at such one or more place or places within each of the said districts as the Governor of the colony of the Cape of Good Hope shall from time to time direct and appoint. And we do further direct and appoint, that each of the said Circuit Courts shall be respectively Courts of Record, and shall, within the district in which it may be holden, have and exercise all such and the same jurisdiction, powers, and authority as is hereby vested in the said Supreme Court of the colony of the Cape of Good Hope throughout the whole of the said colony; and that all crimes and offences cognizable in the said Circuit Courts shall be inquired of, heard, and determined by the said Circuit Judge and a jury of nine men, and that the verdict of such jury shall be pronounced and recorded in the manner before directed respecting the verdicts of juries to be given in the said Supreme Court; and that the provision hereinbefore contained respecting the ignorance or supposed ignorance of the English language of any person otherwise competent to serve on any jury in the said Supreme Court, shall also extend and apply to persons serving or who may be required to serve as jurors in the said Circuit Courts or any of them. Provided nevertheless, and we do further ordain and direct, that if upon the trial of any crime or offence before any of the said Circuit Courts nine good and lawful men, being duly summoned, shall not appear to form a jury, then and in all such cases such trial shall be had before the

Circuit Judge and any number of the jury who shall appear, not being less than six, who shall be sworn and have the same power as if the full number of nine had appeared. Provided also, and we do further direct and appoint, that all civil suits or actions depending in any of the said Circuit Courts shall be tried and decided by the judge of such court alone and without a jury; and that in all cases where the sum or matter at issue in any such suit or action shall exceed or be of the value of more than one hundred pounds sterling British money, the judge of the said court respectively shall cause the evidence on every such hearing or trial as aforesaid to be taken down in writing by the clerk or other proper officer in open court in the presence of the witnesses respectively giving the same, and the evidence so taken shall be entered upon the proceedings of the said courts and be of record; and in every case in which any appeal shall be made and allowed under the provisions of this our charter from any judgment of the said Circuit Courts, copies of all documents and papers which shall have been produced and given in evidence shall be certified and transmitted by the said clerk or other proper officer as authentic, and also copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required by the party producing the same, be in like manner authenticated and marked by such officer as aforesaid as rejected, in order that all such copies may be annexed to the record as part thereof in case of appeal. And we do further direct and declare, that it shall be lawful for the judges of the said Circuit Court respectively, on the application of either of the parties, plaintiff or defendant, at or before the trial of any civil suit or action commenced in the said Circuit Courts respectively, to permit the evidence on such trial to be recorded and certified as aforesaid, although the sum or matter at issue may be less than one hundred pounds sterling, provided that it shall be made to appear to such judge that such judgment, decree, order, or sentence which may be given, made, or pronounced in such suit or action may be of such importance as to render it proper that an appeal should be permitted; and if after giving or pronouncing such judgment, decree, or order, the said judge shall be of opinion that such judgment, decree, order, or sentence is of such importance as to make it proper that an appeal should be permitted, it shall be lawful for the said judge to allow either of the said parties, plaintiff or defendant, to appeal to the said Supreme Court in like manner and under and subject to the like rules and regulations as in and by this our charter are directed in other cases of appeal from the said Circuit Courts. And we do further direct and appoint, that it shall be lawful for the plaintiff or plaintiffs, defendant or defendants, against whom any sentence, judgment, or decree or order of the said Circuit Courts respectively shall be given, for or in respect of any sum or matter at issue above or exceeding the value of one hundred



pounds sterling, to appeal therefrom to the said Supreme Court; and the party or parties appealing from such sentence, judgment, decree, or order, shall within fourteen days from the passing thereof give notice to the adverse party or parties of such appeal, and within fourteen days from and after such sentence, judgment, decree, or order, enter into sufficient security, to be approved by the judge of the said Circuit Courts respectively, to satisfy and perform the said judgment, decree, or order, in case the same shall be affirmed or the appeal dismissed, together with such further costs as shall be awarded thereon; and in all cases of appeal where notice shall be given and security perfected as aforesaid, execution shall be stayed, and not otherwise; and the said Supreme Court shall and may inquire into, hear, and decide all questions whether of law or fact arising upon any such appeal, but shall not admit or receive any evidence which was not tendered to the Circuit Court from which such appeal may be brought on the hearing or trial of any such suit or action therein. And we do further direct and appoint, that as often as any action or suit shall be brought in the Supreme Court or in either of the said Circuit Courts respectively, and it shall be made to appear to the court before which such action or suit may be pending, that such action may be more conveniently heard or determined either in the said Supreme Court or in some other of the said Circuit Courts, it shall be lawful for such court to permit and allow such action or suit to be removed to such other court, and such allowance shall be certified by the judge, together with the process and proceedings in such action or suit, to the court into which such action or suit shall be intended to be removed, and thereupon it shall be lawful for such last-mentioned court and such court is hereby required to proceed in such action or suit in like manner as if the same had been originally commenced and prosecuted in such last-mentioned court. And we do further ordain and direct, that no judgment or sentence, either of the said Supreme Court or of any such Circuit Court as aforesaid, in any criminal case whereby any person shall be condemned to death, or transportation, or banishment from the said colony, shall be carried into execution until a report of all the proceedings upon any such trial hath been laid before or transmitted to the Governor of the said colony by the Chief Justice or Puisne Judge presiding at any such trial, nor until such Governor shall have authorized and approved the execution of such sentence. And we do further grant, ordain, direct, and appoint, that it shall and may be lawful for the said Supreme Court, by any rules or orders of court to be by them from time to time for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations as to them shall seem meet, touching and concerning the time and place of holding the said Supreme Court and touching the forms and manner of proceeding to be observed in the said Supreme Court and Circuit Courts respectively,

and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal, indictments and informations to be therein brought, the appointing of commissioners to take bail and examine witnesses, the examination of witnesses *de bene esse*, and allowing the same as evidence, the proceedings of the sheriff and other ministerial officers of the said courts respectively, the process of the said courts and the mode of executing the same, the summoning, empannelling, and challenging of jurors, the admission of barristers, advocates, attornies, and solicitors, and proctors, the fees, poundage, or perquisites to be lawfully demanded by and payable to any officers, attornies, solicitors, and proctors, in the said courts respectively, and touching and concerning all such other matters and things necessary for the proper conduct and dispatch of business in the said Supreme and Circuit Courts respectively, and all such rules, orders, and regulations, from time to time to revoke, alter, amend, or renew, as occasion may require. Provided always, that no such rules, orders, and regulations shall be repugnant to this our charter and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of business of the said Supreme Court and Circuit Courts respectively. And that all such rules and forms of practice, process, and proceeding, shall, so far as the circumstances of the said colony may permit, be framed with reference to the corresponding rules and forms in use in our Courts of Record at Westminster, and that the same be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said colony for three months at least before the same shall operate and take effect. Provided always that all such rules, orders, and regulations shall forthwith be transmitted to us, our heirs, and successors, under the seal of the said court, for our or their approbation or disallowance. And whereas it may be expedient and necessary to make provision respecting the qualifications of jurors to serve in the said courts, and the mode of enforcing the attendance of such jurors, and it may also be expedient and necessary to make provision for the extension of trial by jury in the said Supreme Court or Circuit Courts in civil cases: Now we do further ordain, direct, and appoint, that it shall and may be lawful for the Governor for the time being of our said colony, with the advice of the Legislative Council of Government thereof, to make and establish all such wholesome laws, statutes, and ordinances, as to them may seem meet, respecting the matters aforesaid, which laws, statutes, and ordinances shall forthwith be transmitted to us for our approbation or disallowance in the manner prescribed by law respecting all other the laws, statutes, and ordinances made or to be made by the said Governor, with the advice of the said Council. And whereas it may be expedient to establish within our said colony Courts of Request

and other courts having jurisdiction in civil cases of small amount or value, and in cases of crimes or offences not punishable by death or transportation: Now we do hereby authorize and empower the Governor for the time being of our said colony, with the advice of the Legislative Council of Government thereof, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish all such Courts of Request and other courts having jurisdiction in civil and criminal cases within our said colony: Provided that the jurisdiction of such civil courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of £40 (6) sterling money, or wherein the title to any lands or tenements, or any fee, duty, or office, may be in question, or whereby rights in future may be bound. And provided also, that the jurisdiction of such courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death, transportation, or banishment from the said colony. And we do hereby authorize and empower the said Governor, by and with the advice of the said Chief Justice and Puisne Judges of the said Supreme Court for the time being, to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding in any such last-mentioned courts, and respecting the local limits within which the jurisdiction thereof is to be exercised, and respecting the manner and form of carrying the judgments and orders of such courts into execution, and all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said courts. And we do hereby grant, ordain, and direct, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said Supreme Court of the colony of the Cape of Good Hope, to appeal to us, our heirs and successors, in our or their Privy Council, against any final judgment, decree, or sentence of the said court, or against any rule or order made in any such civil suit or action, having the effect of a final or definitive sentence, and which appeals shall be made, subject to the rules, regulations, and limitations following, that is to say, in case any such judg-

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(6) Under the charter of 1827 District Courts had been appointed, the jurisdiction of which did not extend in the Cape District to cases where more than £20 were in dispute, nor in other places to a larger amount than £10. Whoever, in the Cape District, had a claim on another for more than £20, was obliged to apply to an attorney at least three or four days before the matter could be brought

into court. If his claim was founded on a note or bond already due, no witnesses were required, and it would have been sufficient to submit the document to his attorney, who handed it to an advocate, by whom it was submitted to the court on Tuesday, the day appointed for such claims, for provisional judgment, which was immediately granted if no one appeared in defence.

ment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £500 sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand, or question to or respecting property or any civil right amounting to or of the value of £500 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the Supreme Court may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court, by petition, for leave to appeal therefrom to us, our heirs, and successors, in our or their Privy Council. And in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, the said Supreme Court shall and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that execution thereof shall be suspended pending the said appeal, as to the said court may in each case appear to be most consistent with real and substantial justice; and in case the said Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given shall, in like manner and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs and successors, shall think fit to make thereupon. And in all cases we will and require that security shall also be given by the party or parties appellant, to the satisfaction of the Supreme Court, for the prosecution of the appeal and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petitions for leave to appeal, then, and not otherwise, the said Supreme Court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs, and successors, in our or their Privy Council, in such manner and under such rules as are observed in appeals made to us from our plantations or colonies. And we do hereby reserve to ourselves, our heirs and successors, in our or their Privy Council, full power and authority upon the humble petition, at any time, of any person or persons ag-

grieved by any judgment or determination of the said Supreme Court, to admit his, her, or their appeal therefrom upon such other terms and upon and subject to such other limitations, restrictions, and regulations, as we or they shall think fit, and to reverse, correct, or vary such judgment or determination as to us or them shall seem meet. And it is our further will and pleasure that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs and successors, the said court shall certify and transmit to us, our heirs and successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders had or made in such causes appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court. And we do further direct and ordain, that the said Supreme Court shall in all cases of appeal to us, our heirs and successors, conform to and execute such judgments and orders as we shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or rule, by the said Supreme Court of the colony of the Cape of Good Hope could or might have been executed. And we hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects, within and belonging to the said colony, that in execution of the several powers, jurisdictions, and authorities hereby granted, made, given, or created, they be aiding and assisting and obedient in all things, as they will answer the contrary at their peril. Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend to prevent us, our heirs and successors, from repealing these presents or any part thereof, or from making from time to time, as occasion may require, such further or other provisions by letters-patent for the administration of justice, civil and criminal, within the said colony and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner as if these presents had not been made, these presents or any thing contained to the contrary therein in anywise notwithstanding. And whereas our royal brother and predecessor, his late Majesty King George the Fourth, by letters-patent under the great seal of the United Kingdom aforesaid, bearing date at Westminster the twenty-fourth day of August, in the eighth year of his reign, did grant, direct, order, and appoint that there should be within the colony of the Cape of Good Hope a court which should be called the Supreme Court of the Colony of the Cape of Good Hope, and it was thereby, amongst other things, provided that nothing therein contained should extend or be construed to extend to prevent us, our heirs, and successors from repealing the said letters-patent or any part thereof, or from making such further or other provision by letters-patent for the administration

of justice, civil and criminal, within the said colony and the places then or at any time thereafter to be annexed thereto, as to us, our heirs and successors should seem fit, in as full and ample a manner as if the said letters-patent had not been made, the said letters-patent or any thing contained to the contrary therein in anywise notwithstanding. Now we do hereby, in virtue and in pursuance of the powers so reserved to us as aforesaid in and by the said letters-patent, repeal and revoke the before-mentioned letters-patent and each and every part thereof: Provided nevertheless, that all decrees, judgments, and sentences, rules and orders heretofore made by the courts established by, or by the judges appointed under the said letters-patent, or by any or either of such courts or judges, and that all general rules, orders, and regulations of court made under and in pursuance thereof, and that all proclamations issued by any Governor of the said colony in virtue thereof, and that all laws and ordinances promulgated by the Governor of the said colony, with the advice of the Council of Government thereof, for carrying the said letters-patent or any part thereof into effect, shall to all intents and purposes be as binding, conclusive, good, valid, and effectual as if these presents had not been made. And we do further ordain and direct that the Governor of our said colony of the Cape of Good Hope, upon the arrival therein of these presents, shall by proclamation notify to the inhabitants of the said colony the time when the courts hereby established will be open, and as soon as the judges of the said Supreme Court shall have assumed and entered upon the exercise of their jurisdiction therein, then and from thenceforth the Supreme Court of the colony of the Cape of Good Hope and the Circuit Courts now established within the same and the jurisdiction of the said courts respectively shall be absolutely abolished, cease, and determine, and every suit, action, complaint, matter, or thing, civil or criminal, which shall be depending in such last-mentioned courts respectively, shall and may be proceeded upon in the Supreme Court instituted under and by virtue of these presents, or in either of the said Circuit Courts which shall and may have jurisdiction within the district or place in the colony of the Cape of Good Hope where such action or suit or other matter, civil or criminal, respectively was depending, and all proceedings which shall thereafter be had in such action or suit or other matter, civil or criminal, respectively, shall be conducted in like manner as if such action or suit or other matter, civil or criminal, had been originally commenced in one or other of the said courts instituted under these presents, and all the records, muniments, and proceedings whatsoever of and belonging to the said Supreme Court and Circuit Courts established by the said recited letters-patent, shall, from and immediately after the opening of the said courts respectively instituted by these presents, be delivered over and deposited for safe custody in such of the said courts re-

spectively instituted under these presents, as shall be found most convenient, and all parties concerned shall and may have recourse to the said records and proceedings as to any other records or proceedings of the said courts respectively. And we do hereby further declare and direct, that during the absence from our said colony of the Cape of Good Hope of the Governor thereof, or if there shall be no person commissioned by us, our heirs and successors, to be the Governor of our said colony, then and in every such case all and every the powers hereby granted to and vested in the Governor for the time being of the said colony shall and may be executed by and vested in the Lieutenant-Governor thereof, or the officer for the time being administering the government thereof. In witness, &c. Witness, &c. the fourth day of May, 1832.

By Writ of Privy Seal.

## SIERRA LEONE

WITH

### THE SETTLEMENTS AT GAMBIA AND ON THE GOLD COAST.

THE first occupation of the colony of Sierra Leone is dated as far back as 1787. In that year a tract of land upon the peninsula was ceded to His Majesty by the native chiefs, for the purpose of affording an asylum to some Europeans and Africans, who had been conveyed from England with a view of forming a settlement upon this part of the coast. This tract was clearly defined at the time of its grant to the Sierra Leone Company in 1791. The peninsula, as at present known, is bounded on the north by the river Sierra Leone, on the south and west by the sea and Calmont Creek, on the east by a line up the Calmont to the Waterloo Creek, and down this last to the Bunce, which is in fact part of the Sierra Leone river. These limits comprehend a tract of about eighteen miles north to south, and twelve east to west. The land is described as far from fertile beyond the first season after clearing.

#### HISTORY AND CONSTITUTION.

The colony was at first settled by blacks who had come to England at the close of the American war, and had been provided for by being conveyed to Sierra Leone to make a settlement there. This settlement was unfortunate. The next was made by the Nova Scotian settlers in 1792. They were inhabitants of the southern States of the Union who had been employed in the royal army, and in reward for their services during the war were settled at its close upon lands in Nova Scotia. The climate however so ill agreed with them, that they gladly embraced the offer of the company to convey them to Sierra Leone.



This settlement, however, was as unfortunate as the last. In 1800 the population of the colony was increased by the accession of 550 maroon settlers. The maroon population appears to have favourably settled here, and to be on the increase in numbers, intelligence, and prosperity. At the time of the commissioners' visit some of the maroon inhabitants filled offices of trust in the colony. In 1819 some negroes of Barbados, who had been concerned in an insurrectionary movement in that colony, were brought as prisoners to Sierra Leone, and at first kept under restraint, but subsequently they were released, and they appear to have become useful and industrious settlers. The number originally brought was eighty-five. Of these thirty-four are known to be living, twenty-six dead, and the remaining twenty-five cannot be accounted for. Some have found employment in trade, and many have been sought after on account of their knowledge of tropical agriculture. To these four classes have been added the disbanded soldiers of some black regiments. These men appear to have unwisely congregated about the chief seat of the colony, but the commissioners seemed to think they would be a valuable addition to its strength and importance. Great numbers of liberated Africans have also been sent to the colony, but on the whole it seems that these various additions have never been able to keep up the population at the amount to which it was brought by their settlement in this colony. This mixed population was, in April, 1826, stated to be about 13,020. The Maroons alone seemed to be on the increase.—Report of Commissioners of Inquiry into the state of Sierra Leone, p. 1 to 21.

#### *Judicial and Civil Establishments.*

The institutions for the administration of government and the dispensation of justice are founded on the provisions of the charter granted in 1802 to the Sierra Leone Company. This charter was subsequently revised, and (with some alterations) confirmed first in 1808, when the settlement was transferred to the Crown, and next in 1821, when the forts and possessions of the late African Company on the Gold Coast were annexed to the colony.—Sierra Leone Com. Rep. 89.

The charter as last revised in 1821, ordains that there shall be nine or more councillors advising and assisting the Governor, (five of them to be a quorum,) that in the making or passing of laws the Governor (or in the absence of the Governor, the Lieutenant-Governor or Commander-in-Chief for the time being,) shall have a negative voice, and that in certain cases the Governor shall have power to suspend councillors, and when the number in the colony shall be less than nine, to appoint others, subject to His Majesty's approval. The councillors first named in the charter are councillors *ex officio*, namely the Chief Justice, the King's Advocate, the Colonial Secretary, and the Surveyor of Lands. The Chief Justice, though first in council, is declared ineligible to succeed to the administration of the government. The King's Advocate, as next in order, is consequently the person to succeed *pro tempore* in the event of the absence or death of the Governor, unless a Lieutenant-Governor has been previously appointed, which appointment may in certain specified cases be made by the Governor. The commissioners thought that this rule, preferring the King's Advocate to the chief justice as the temporary successor of the Governor, imperiously required alteration.

#### LAWS. (1)

The law of England is understood to be and in practice generally is the law of the land; but the Governor and Council are empowered to make such laws as they may deem necessary to the welfare of the colony, subject however to certain restrictions which are specified in the charter. They have accordingly exercised this power from time to time as circumstances seemed to them to require. The colonial enactments have generally been prepared by the King's Advocate, but in some instances by other members of Council, and being passed after three readings, they are recorded in the minute book and become laws. It has been customary to promulgate the orders of the executive by means of proclamations issued by the Governor. The provisions of the Act for the Relief of Insolvent Debtors are not in force at Sierra Leone,

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(1) See ante, p. 3 to 16, on the general topic how far the colonies are subject to the law of the mother country.

nor is there any colonial enactment analogous to it. Trial by jury is a part of the law and is advantageously in practice. There are no other qualifications required than his being an inhabitant of the colony and of sufficient age and of good character.—Sierra Leone Com. Rep. 89.

#### COLLECTION OF LAWS.

An attempt was lately made to arrange such laws as are in force, with a view to their being printed; the object however was but partially accomplished, and there being but one manuscript copy in the colony (1826) few of the magistrates have the means of referring to it.—*id.* ib.

#### COURTS.

The Governor and Council constitute a Court of Record to hear and determine appeals from the Court of the Recorder or other Superior Courts of the Colony, and when the matter in dispute exceeds the value of £400, an appeal lies to the King in Council.

The colonial courts are as follows—the Court of Royal Commission, the Court of Vice-Admiralty, the Court of the Recorder of Freetown, the Courts of Quarter Sessions, Oyer and Terminer, the Court of Requests, and the Police Court.

An authority is vested in the Governor and Council to establish such other courts and to issue such special commissions as the due administration of justice may seem to require. The Governor has also the power of convening courts as Chancellor and Ordinary.

#### *Court of Royal Commission.*

The Commissioners of the Royal Court constituted under the great seal are the Governor, the Chief Justice, Commissary Judge of the mixed Courts, King's Advocate, Colonial Secretary, and others specified in the commission, three of whom may form a court, one of the four first-named always presiding. This court was established for the trial of offences committed on the high seas, and for offences relating to the slave trade, in places where no local British jurisdiction existed. It has not often been called into operation.

*Vice-Admiralty Court.*

The Chief Justice is judge of this court, which has power and jurisdiction similar to those of the corresponding courts in the West India Islands, but since the establishment of the courts of mixed commission the business of this court has been very much reduced.

*Court of the Recorder of Freetown.*

The Chief Justice, as Recorder, presides in this court, and is aided by the assistant judges appointed by the Governor from amongst the members of Council. This court is stated by the chief justice to resemble most closely the Court of Common Pleas in England, and to be also a Court of Equity. Although two assistant judges are appointed, one of these in addition to the chief justice, or in cases where he is a party, the two assistants only, may constitute a court. In all cases where the number of voices shall be equal, the chief justice, or in his absence, the senior assistant judge present, has two voices. This court is empowered by charter to hear and determine all civil suits, actions, or pleas which may happen within the colony, or any of the forts, islands, &c. subject thereto. In all cases where the action would, if the parties were resident in England, be tried by a jury, it is directed that such action shall be tried before a jury in the Court of the Recorder according to the practice in England, or as near thereto as circumstances will permit.

*Court of Quarter Sessions of the Peace and of Oyer and Terminer.*

The Chief Justice and two other members of Council usually preside at this court. The practice is regulated by that of the judges on circuit in England.

*Court of Requests.*

By the charter of 1821 the Court of Requests established by the former charter was abolished, but the Governor was directed, with the concurrence of the Council, to appoint justices or other commissioners for particular

districts, upon whom the authority of the abolished court would devolve, and who were to determine all matters of debt or damage under 40*s.* in the same manner (as near as circumstances would admit) as it was lawful for Commissioners of Requests to do in England. This was done; and by an act of the Governor and Council in 1825, the jurisdiction of the commissioners was extended to actions amounting to £10, provided that if the sum exceeded 40*s.*, appeal might be had, if in Gambia or on the Gold Coast, to their respective Courts of Common Pleas, and in any other part of the colony to the Court of the Recorder of Freetown. The commissioners are empowered, in default of payment, to commit the debtor to prison for *various specified times, such commitments to be in full satisfaction of judgment.* Commissioners of Requests sit once a week at Freetown, and form what is there called a Court for the Recovery of Small Debts.

#### *The Police Court of Freetown.*

This court may be held twice a week before two magistrates, (a member of council being one,) so that by the presence of two a kind of petty sessions should be formed, the member of council always presiding. The proceedings are to be recorded by a clerk of police, who is maintained on the civil establishment for the purpose.

#### JUDICIAL ESTABLISHMENT.

The judicial establishment in 1826 consisted (independently of the Governor and Council) of the Chief Justice, the King's Advocate, the Sheriff, the Clerk of the Crown and the Recorder's Court, the Coroner of Freetown and two Practising Attornies, seven Justices in the Commission of the Peace, the Mayor of Freetown and three Aldermen, eight Commissioners of Requests, besides eight District Magistrates, three of whom are Coroners for three country districts.

#### *The King's Advocate.*

This officer is understood to be the Governor's legal adviser, and the public prosecutor. He also practises as an advocate or attorney in the courts.

*Sheriff.*

The sheriff is annually appointed by the Governor and Council. His duties correspond to those of sheriff in England.

*Clerk of the Crown.*

This officer is also clerk of the Court of the Recorder, and one of the writers in the office of the Colonial Secretary.

*Coroner.*

The Coroner of Freetown was stated by the chief justice to have been sometimes appointed by the Governor and sometimes elected by the freeholders.

*Attornies and Solicitors.*

Neither of the two individuals practising as attornies and solicitors has been professionally educated. One is an European, who acts as King's Advocate and Registrar of the Vice-Admiralty Court; the other a person of colour, born and educated in England, and engaged in mercantile pursuits.

*Justices.*

One of the seven justices is a military officer; the other six hold civil situations under the government.

The Mayor and Aldermen of Freetown are appointed by the Governor and Council.

Of the Commissioners of Requests three are magistrates and five are persons engaged in trade.

The district magistrates, three of whom are also coroners, are either local superintendants or hold situations in their respective districts as clergymen or teachers under the Church Missionary Society.—Sierra Leone Com. Rep. 89 to 96.

**GAMBIA.**

The executive powers of the Commandant are pretty much confined to matters of police or local regulations for the town of Bathurst.

There are at present resident in St. Mary's eight justices of the peace, one of whom acts as sheriff, and the other seven are Commissioners of Requests.

Since the formation of the settlement only two Courts of Oyer and Terminer and General Gaol Delivery have been held, at which Mr. Rendall, the Chief Justice of Sierra Leone, acted as president.—Rep. Com. Sierra Leone, Gambia, House of Commons' Papers, 29th June, 1827, No. 552.

### GOLD COAST.

No distinct judicial establishment exists upon the Gold Coast; the only civil authority is that vested in individuals as justices of the peace, who act also as Commissioners of Requests. In the latter character they have decided cases where the matter in dispute was upwards of £30 in value.—*Id. ib.*

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### CHARTER OF JUSTICE.

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#### Ninth Part Patents of the Second Year of King George the Fourth.

GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas by an Act of Parliament made and passed in the thirty-first year of the reign of his late Majesty King George the Third, our dearest father, intituled, "An Act for establishing a Company for carrying on Trade between the Kingdom of Great Britain and the coasts, harbours, and countries of Africa, and for enabling the said company to hold by grant from His Majesty, his heirs, and successors, and from the native Princes of Africa, a certain district of land, commonly called the Peninsula of Sierra Leone, now vested in his Majesty or belonging to the said princes, for the better enabling the said company to carry on the said trade," it was, amongst other things, enacted, that the several persons therein named and described should be and they were thereby created one distinct and separate body politic and corporate, by the name or style of "The Sierra Leone Company;" and it was also enacted, that it should be lawful for his said late Majesty, his heirs, and successors, to make unto the said company a grant by letters-patent, under the great seal of

Great Britain, of so much and such part of all that tract or district of land situate and being at Sierra Leone, on the coast of Africa, and commonly called or known by the name or description of "The Peninsula of Sierra Leone," as then already might have or should thereafter by any grant, purchase, or cession from any of the kings, princes, or chiefs having right therein, become vested in his said late Majesty, his heirs, or successors, with power and liberty to and for the said company to purchase of and from all kings, princes, and chiefs, or other powers having right to make sale thereof, so much land as should include the whole tract or district so commonly called or known by the name of the Peninsula of Sierra Leone as aforesaid, bounded as therein-after mentioned; to hold the same to the said company and their assigns, upon such terms, conditions, and reservations as his said late Majesty, his heirs, and successors should judge expedient; and it was thereby further enacted, that the said Act should take place and have continuance from the 1st day of July, 1791, for the term of thirty-one years, and from thence to the end of the next session of Parliament: And whereas the said company, in pursuance of the said Act and immediately after passing the same, did raise a large capital of stock, and did enter upon the business and undertakings for which they were incorporated, and did also purchase from the natives of Sierra Leone aforesaid a part or district of the said peninsula, and form a very considerable establishment for their officers, servants, and settlers, and built a town called Freetown, and laid out plantations there, and also formed some other settlements or factories on the neighbouring coasts for the purpose of carrying on trade with this country in the natural productions of Africa: And whereas the said company humbly besought his said late Majesty, by petition, to make unto them such grant of the said peninsula as in the said Act of Parliament is specified; and further to grant unto them certain powers, privileges, and franchises for the government of the said peninsula, and for the effectual administration of justice in civil causes, and for the trial and punishment of crimes or misdemeanors committed there, or in the said company's other factories and settlements, suggesting that the granting of such powers unto the said company would not only conduce to the welfare of the said peninsula, but would also tend (as there was great reason to believe) to advance the national interests on the continent of Africa: And whereas his said late Majesty having considered the premises, did by virtue and in pursuance of the said recited act, and of his own special grace, certain knowledge and mere motion, give and grant, by letters-patent under the great seal of Great Britain, bearing date at Westminster the 5th day of July, in the fortieth year of his reign, for himself, his heirs, and successors, to the said company, their successors, and assigns, under the reservations, limitations, and declarations thereafter expressed, all and



every such part and parts of all that tract and district of land, situate and being at Sierra Leone, on the coast of Africa, and commonly called or known by the name or description of "The Peninsula of Sierra Leone," as already had by any grant, purchase, or cession from any of the kings, princes, or chiefs having right therein become vested in his said late Majesty, his heirs, and successors, together with all the soils, grounds, havens, ports, gulfs, and bays, mines, minerals, precious stones, quarries, woods, rivers, waters, fishings, as well royal as other fishings, pearls, commodities, jurisdictions, royalties, franchises, privileges, and pre-eminences within the same, and the precincts thereof and thereunto in any sort belonging or appertaining, and which his said late Majesty, by his letters-patent, might or could grant, and in as ample a manner as his said late Majesty or any of his royal progenitors had hitherto granted to any company or body politic or corporate, or any other person or persons whomsoever, and in as large and ample a manner as if the same were there particularly mentioned and expressed; and did further give and grant unto the said company, their successors, and assigns, full power, liberty, and privilege to purchase of and from all kings, princes, and chiefs, or other powers having right to make sale thereof, so much land in addition thereto as should include the whole tract or district commonly called or known by the name of "The Peninsula of Sierra Leone" as aforesaid, as the same was bounded on the north by the river Sierra Leone, on the south by the river Caramanca, on the east by the river Bruce, and on the west by the sea; to have, hold, and enjoy the same peninsula, and the whole use, property, and possession thereof, unto the said company, their successors, and assigns, to be holden of his said late Majesty, his heirs, and successors, as of his manor of East Greenwich, in the county of Kent, in free and common socage and not in capite, yielding and paying therefore to his said late Majesty, his heirs, and successors, the rent or sum of ten shillings of lawful money of Great Britain, on the 1st day of September yearly, all which lands, countries, and premises thereby granted or mentioned, or intended so to be, his said late majesty did by the said letters-patent make, erect, and create one independent and separate colony, by the name of "The Colony of Sierra Leone;" and did further for himself, his heirs, and successors, grant unto the said company and their successors, and did by the said letters-patent or charter of justice ordain, will, and establish that the Court of Directors of the said company, assembled for that purpose, should and might make, enact, and declare laws, statutes, and ordinances fit and necessary for and concerning the government of the said colony, and that the same should be in full force and virtue within the said colony of Sierra Leone, so as the same should not be repugnant to the laws of this realm, and to impose reasonable fines, penalties, or forfeitures for any breach or breaches

thereof; and did further will and ordain that the Court of Directors of the said company for the time being, being assembled for that purpose, should from time to time have full power and authority to nominate, make, constitute, and appoint a Governor and three councillors for the government of the said colony, and the factories or settlements dependent thereon, and such Governor and Council, or any of them so appointed, at their pleasure to remove or recall, and another or others in his or their place or places to appoint; and that such Governor and Council so to be appointed, should and might make, enact, and declare laws, statutes, and ordinances fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of this realm, and that the same should be in full force and virtue within the said colony of Sierra Leone until the said Court of Directors should think fit to disallow or disapprove of the same; and did further give and grant unto the said company and their successors, and did by the said charter ordain, direct and establish that there should be within the said town of Freetown one body politic and corporate, by the name or style of "The Mayor and Aldermen of Freetown," and that such body politic and corporate should consist of a mayor and three aldermen, and that the said body politic and corporate, by the name and style aforesaid, should have perpetual succession, and should and might be able and capable in law to sue and be sued in any courts and causes whatsoever, and should and might have a common seal for the business and affairs of the said corporation, which common seal they and their successors might break and change at their pleasure: And did further, by the said charter, direct that the persons constituted respectively the first and modern mayor, and the first and modern aldermen of the said town of Freetown, in and under the same, should, at a time to be appointed for that purpose by the Governor, or in case of his absence, by the senior of the Council then residing at Sierra Leone, within fourteen days after notice of the said charter, take an oath duly to execute their respective offices, together with the oath of allegiance, which oath the said Governor, or in his absence, the senior of the council then residing at Sierra Leone, was thereby empowered to administer, and that from the time of taking the said oaths of office and allegiance the said mayor should continue in the said office until another person should be duly elected and sworn into the said office as thereafter was directed; and did by the said charter direct that the said persons therein nominated as aforesaid to be aldermen of Freetown, should continue in their respective offices of aldermen from the time of taking such oaths as aforesaid, for and during the term of their natural lives, unless their said places should be avoided, or themselves removed, in such manner as thereafter was mentioned: And did further will and direct, that it should and might be lawful to and for the Governor and Council of the

said colony for the time being, or the major part of them, whereof the said Governor, or in his absence, the senior of the council then residing at Sierra Leone, to be one, yearly and every year, on the first Monday in the month of September, to assemble themselves and proceed to the election of one person out of the aldermen of the said town of Freetown to be mayor of the said town for one year, from the 29th day of September in every year, and until another should be duly elected and sworn into the said office: And did further ordain and appoint, that the person so chosen into the office of mayor should, on or before the 29th day of September next after he should be chosen into his said office as aforesaid, take the usual oath of office and the oath of allegiance before the said Governor for the time being, or in his absence, before the senior of the council then residing at Sierra Leone, who were thereby authorized and required to administer the same, and should continue in such office for the space of one whole year from the said 29th day of September, and until another should be duly elected and sworn into the said office in manner before mentioned; and that in case any mayor should happen to die in his said office, the Governor and Council of the said colony for the time being, or the major part of them, (whereof the said Governor, or in his absence, the senior of the council then residing at Sierra Leone, to be one,) should and might, as soon after as they conveniently could, assemble and elect one other person out of the said aldermen of the said town of Freetown for the time being to be mayor of the said town of Freetown for the remainder of the year, and until another should be duly elected and sworn into the said office; and that the person so chosen and appointed as aforesaid should immediately thereupon take the same oaths of office and allegiance as were before directed to be taken by the mayors of the said corporation: And did further ordain, that the mayor of the said town of Freetown thereinbefore nominated, and every other person who should thereafter be mayor of the said town, should, after the determination of his office of mayor, continue to be one of the aldermen of the said town until his said place should be avoided and himself removed in manner thereafter mentioned; provided that the mayor for the time being should be capable of being re-elected from time to time when and as the electors should think fit: And did further will and direct, that so often as any of the aldermen of the said town should die or be removed, or their places be avoided in manner thereafter mentioned, the Governor and Council of the said colony for the time being, or the major part of them, (whereof the said Governor, or, in his absence, the senior of the Council then residing at Sierra Leone, to be one,) should and might assemble and elect some other fit person out of the inhabitants of the said town of Freetown into the said place of alderman, who should, within fourteen days after his election, take the oath of office and the oath of allegiance before the Governor of the

said colony for the time being, or in his absence, the senior of the Council then residing at Sierra Leone, and should continue in such office during his life, unless his said place should be avoided, or himself removed, in such manner as thereafter was mentioned; and that if any person so chosen an alderman should neglect or refuse to accept such office, not having a reasonable excuse for so doing, and should not within fourteen days next after such his election take the oath of office and the oath of allegiance, then and in such case every such person should forfeit and pay such reasonable fine as should for that purpose be fixed and agreed on by the Court of the Mayor and Aldermen thereafter constituted, with the approbation and consent of the said Governor and Council of the said colony for the time being, or the major part of them, (whereof the said Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) to be by them signified to the said court in writing: And did further by the said charter ordain and provide, that if the said mayor, or any of the said aldermen, should remove or return to Europe, or should otherwise be absent from the said town of Freetown by the space of three calendar months, unless for such reasonable cause as the said Governor and Council for the time being, or the major part of them, (whereof the said Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) should allow, or should become the said company's Governor, or one of their Council of the said colony, in every such case the place or office of every such mayor or alderman should be void; and it should and might be lawful to choose another mayor or alderman in the place and stead of such person, in the same manner as was before provided in case such mayor or alderman had been naturally dead: And did further thereby direct and appoint, that it should and might be lawful to and for the said Governor and Council of the said colony for the time being, or the major part of them, (whereof the said Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) to remove any of the said aldermen, upon reasonable cause, provided that a complaint in writing were first exhibited against him, and that he had a reasonable time given him for his defence, and were summoned for that purpose, in case he should be resident within the limits and precincts of the said town of Freetown; but that in case any person should think himself aggrieved by any such sentence or adjudication of removal, such person might, within one calendar month after notice of such removal, appeal to the said Court of Directors, upon giving security to pay the costs of such appeal in case such sentence or adjudication should be affirmed, although such appeal should not suspend the execution of such sentence: And did further by the said charter ordain, direct, and appoint, that the mayor and aldermen for the time being of the town of Freetown aforesaid

should be, and they were thereby constituted, a Court of Record, by the name of "The Mayor's Court of Freetown;" and that they, or any two or more of them, (whereof the mayor, or the senior alderman for the time being residing there, to be one,) might, and they were thereby authorized to try, hear, and determine all civil suits, actions, and pleas between party and party that should or might arise or happen, or that had already arisen or happened, within the said colony of Sierra Leone, or any of the factories subject or subordinate thereunto, except such suits or actions as should be between natives of Africa only not become settlers within the said colony or factories, in which case his said late Majesty willed that the same should be determined among themselves, unless both parties should by consent submit the same to the determination of the said Mayor's Court, and also except where the cause of action or suit should not exceed the value of 40s.: Provided, that if the said mayor, or any of the said aldermen, should be in any ways interested in the event of any such action or suit, no such mayor or aldermen so interested as aforesaid should sit or act as judge in such suit or action, but that the same should be heard and determined by such of them, the said mayor and aldermen, as should be no ways interested therein; and that in all cases where the number of voices should be equal in the determination of any action or suit, the mayor, or in his absence, the senior alderman present, should have two voices: And did further by the said charter direct, that the person constituted first sheriff of the said colony in and under the same, should, at a time to be appointed for that purpose by the Governor, or in his absence, by the senior of the Council then residing at Sierra Leone aforesaid, within fourteen days after notice of the said charter, take an oath duly to execute his office, together with the oath of allegiance, which oaths the said Governor, or in his absence, the senior of the Council then residing at Sierra Leone aforesaid, was thereby empowered to administer; and that from the time of taking the said oaths of office and allegiance the said sheriff should continue in the said office until another should be duly elected and sworn into the said office, as thereafter was directed; and that the Governor and Council of the said colony for the time being, or the major part of them, (whereof the said Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) should yearly, on the first Monday in the month of September, assemble themselves, and proceed to the election of a new sheriff for the year ensuing, to be computed from the 29th day of September next after such election, which sheriff, when elected, so soon as conveniently might be, and before he should enter upon his said office, should take the usual oath of office and the oath of allegiance before the said Governor for the time being, or in his absence, the senior of the Council then residing at Sierra Leone, who were thereby authorized to administer the same, and

should continue in such office during the space of one whole year, from the said 29th day of September, and until another should be duly elected and sworn into the said office, unless his said place should be avoided in such manner as thereafter was mentioned; and that in case any such sheriff should die in his office, or should remove from the said town of Freetown, or be absent from the same by the space of three calendar months, unless for such reasonable cause as the said Governor and Council for the time being, or the major part of them, (whereof the Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) should allow, then the said Governor and Council, or the major part of them, (whereof the Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one,) should and might, as soon as conveniently might be after the death, removal, or absence of such sheriff, assemble and choose another person to be sheriff in his room, who should be sworn as aforesaid, and continue in his office for the remainder of the year, and until another should be duly elected and sworn into the said office; and that the said sheriff thereby appointed, and every other sheriff so to be elected and sworn as aforesaid, should, during his and their continuance in such office respectively, have full power and authority to summon juries, execute and make return of all process of the said court, and of any other court erected by the said charter within the districts aforesaid; and in case of the absence of any such sheriff for such reasonable cause, to be allowed as aforesaid, the deputy or under-sheriff, to be appointed by such sheriff, should return all process, and do all acts in the name of and by virtue of the authority of such sheriff: And did further by the said charter direct, ordain, and appoint, that upon complaint, to be made in writing to the said court, by or on the behalf of any person or persons against any other person or persons whomsoever, then residing or being, or who, at the time when such cause of action had or should have accrued, did or should reside or be within the said town or elsewhere in the said colony of Sierra Leone, or any of the factories subordinate thereto, of any of the causes of suit aforesaid already accrued, or which should or might thereafter accrue, unless the same should be between the natives only of Africa, not become settlers within the said colony of Sierra Leone or the said factories, or unless such cause of suit should not exceed the value of 40s., the said court should and might issue a summons in writing, under the hands and seals of two of the judges of the said court, (whereof the mayor for the time being, or in his absence, the senior alderman residing within the said town of Freetown, to be one,) to be directed to the said sheriff, requiring the party or parties, defendant or defendants, to appear before them at a certain time and place therein to be appointed, to answer the said complaint, and in default of appearance upon return of the said summons at such time

and place, the said court should and might issue forth a warrant, under the hands and seals of any two of the judges of the said court, (whercof the mayor for the time being, or the senior alderman then residing within the said town of Freetown, to be one, unless the said mayor or senior alderman should be a party in such action or suit, and in that case under the hands and seals of any other two of the judges of the said court,) directed to the said sheriff for the time being, to take the body or bodies of such defendant or defendants, and bring him or them before the said court, at a certain time and place therein to be appointed, to answer to the said complaint; and in case of appearance or arrest of the body or bodies of such defendant or defendants, to let such defendant or defendants out to bail upon giving sufficient security (which his said late Majesty did thereby empower the said court to take) to abide and perform the final order and judgment of the said court, or such final order and judgment as should or might be given upon any appeal to be brought in the said cause, or to surrender himself to the said court to be charged in execution till the said judgment should be satisfied; and in default of finding bail, or giving such security as aforesaid, to detain such defendant or defendants in custody, until he, she, or they should have found such bail, or have given such security as aforesaid, or should have judgment or sentence given for him, her, or them for such complaint; and after such bail-bond or security given as aforesaid, or in case such defendant or defendants should be detained in custody for want of bail or security, his said late Majesty did thereby for himself, his heirs, and successors, ordain, direct, and authorize the said court to proceed to the examination of the matter and cause of complaint, either upon the oath or oaths or solemn affirmation of any witness or witnesses, to be taken in the most solemn manner; that is to say, the oath or oaths of such witness or witnesses who should profess the Christian religion to be taken upon the Holy Evangelists, unless such witness or witnesses should be of the persuasion of the people called Quakers, in which case a solemn affirmation should be sufficient; and upon the oath or solemn affirmation of any of the natives, in such manner as they should esteem to be the most binding on their consciences to oblige them to speak the truth, for which purpose, the said court was empowered and required by the said letters-patent to administer such oath or affirmation to such witness or witnesses as should be produced on behalf of either party, (plaintiff or defendant,) or by the confession or admission of such defendant or defendants in his, her, or their answer, upon the like oath or affirmation, according to his, her, or their religion, sect, or caste respectively, which oath or affirmation the said court was also by the said letters-patent empowered to administer; and that thereupon it should be lawful for the said court to give judgment and sentence according to law and equity, and to award and issue a warrant or warrants of execution under the hands and seals of

two of the judges of the said court, (whereof the mayor of the said town of Freetown for the time being, or the senior alderman then residing within the said town, to be one, unless they or either of them should be interested therein, and in that case, under the hands and seals of any two of the aldermen not interested therein,) to be directed to the sheriff for the time being, for levying the debt, duty, or damages adjudged or decreed to the party or parties, complainant or complainants, together with their costs of suit, upon the goods and chattels of such defendant or defendants, or to cause sale to be made of his, her, or their goods and chattels, rendering to the party the overplus, if any were; and for want of sufficient distress, his said late Majesty did thereby give full power and authority to the said court to imprison the defendant or defendants until satisfaction was made by him, her, or them to the plaintiff or plaintiffs of the debt, duty, or damages decreed or adjudged, together with the costs of suit; and in case judgment were given for the defendant or defendants, full power and authority were thereby likewise given to the said court to award costs to such defendant or defendants, and to issue the like process and execution for the same as in cases where costs were awarded to any plaintiff or plaintiffs; and that if any action or suit should be brought or commenced against the mayor of the said corporation for the time being during his being or continuing in his office, it should and might be lawful for the said Mayor's Court to proceed in and determine such suit, in the same manner as in any other action or suit depending before them, but such mayor should not sit as judge or appear on the bench during the hearing of the said cause or making any order therein; and that if any action or suit should be brought against the said sheriff during his being and continuing in his office, it should and might be lawful to and for the said Governor and Council for the time being, or the major part of them, (whereof the Governor or the senior of the Council residing at Sierra Leone to be one,) to nominate and appoint a proper person to execute the process and orders of the said court against such sheriff for the time being; and to the intent that due provision might be made that there might be no failure of justice, if the defendant or defendants, who was or were resident within the said town of Freetown or elsewhere within the said colony, or any of the factories or settlements subordinate thereto, at the time when any cause of action did accrue should withdraw himself, herself or themselves out of or should not be found within the jurisdiction of the said court, his said late Majesty did by the said charter give, grant, will, direct and appoint that in case the sheriff should make return to such summons or warrant of arrest that the party or parties, defendant or defendants therein mentioned, or any of them, was or were not to be found within the jurisdiction of the said court, it should and might be lawful to and for the said court, upon an affidavit of proof verifying the demand of the plaintiff or plaintiffs in such



suit to the satisfaction of the said court, to grant a sequestration to seize the estate and effects of such party or parties, defendant or defendants, to such value as the said court should think reasonable and should direct in such process of sequestration, and the same to detain in the hands of a proper person, to be appointed by the said court, till such party or parties should appear to the said complaint and give security as aforesaid; and in case the party or parties, defendant or defendants, should not appear and give security as aforesaid within the space of six months, unless it should be shown to the said court on behalf of such defendant or defendants, that he, she or they was or were residing in Great Britain or Ireland, then that it should and might be lawful for the said court to proceed to hear and determine the said cause, and to give judgment therein as aforesaid; and in case judgment should be given for the plaintiff or plaintiffs in such suit, to direct the effects so seized to be sold, and out of the produce thereof to make satisfaction to the plaintiff or plaintiffs for the debt, duty or damages, and costs recovered, returning the overplus (if any should be) unto such defendant or defendants; and in case such produce should not be sufficient to make satisfaction to the plaintiff or plaintiffs, that then it should and might be lawful to and for the said court to award execution for the residue of the debt, duty, or damages and costs, recovered in manner aforesaid: provided nevertheless, that in all cases where the action to be tried would, if the parties had been resident in this realm, have been tried by a jury in some court of law, every such action should be tried in the said mayor's court before a jury, according to the practice of the said courts of law in this realm, or as near thereto as the circumstances would admit of; and his said late Majesty did thereby empower the said court to administer to such jury the usual oath taken in like cases in this realm: And for the considerations therein recited, his said late Majesty further, by the said charter, willed and ordained that all such money, securities and effects of the suitors of the said court as should be ordered into court, or to be paid, delivered or deposited for safe custody, should be paid or delivered unto or deposited with the Governor and Council of the said colony, to be by them kept in deposit, subject to such orders and directions as the said mayor's court should from time to time think fit to make concerning the same for the benefit of the suitors; and did also give and grant unto the said Court of Directors of the said Company, or the major part of them, full power and authority from time to time to name and appoint an officer, under the name of accountant-general of the mayor's court of Freetown, and the same at their pleasure to remove and another to appoint, who should act, perform and do all matters and things necessary to carry into execution the orders of the said mayor's court relating to the payment or delivery of the suitor's money, effects and securities unto the Governor and Council of the said colony, and taking the same out

again, and keeping the accounts with the said Governor and Council and registrar, or other proper officer of the mayor's court, and other matters relative thereto, under such rules, methods and directions as should from time to time be made and given by the Court of Directors of the said Company, which rules, methods and directions his said late Majesty thereby willed and directed should be according to such as were observed by the accountant-general of the High Court of Chancery of Great Britain, or as near thereto as might be, and as the situation and circumstances of affairs would admit; and did further thereby authorize the said mayor's court to administer oaths and affirmations, and to frame such rules of practice, and nominate and appoint such clerks and officers, and to do all such other things as should be found necessary for the administration of justice, and the due execution of all or any of the powers given to them by the said charter, so as they from time to time should give an account thereof unto the said Company, and so as the same should be subject to the approbation, controul and alteration of the said Court of Directors of the said Company, whom his said late Majesty did likewise will and ordain to have full power and authority to make such rules and orders for the better administration of justice as they should from time to time think fit and necessary; but such rules and orders so to be made by the said mayor's court, so far as the same should be repugnant to any rules or orders afterwards made by the said Court of Directors of the said Company as aforesaid, should nevertheless be in force until the same should be revoked or altered by the said Court of Directors, and notice thereof given unto the said mayor's court: And did further thereby require and command that a table of fees to be allowed to such clerks and officers should be settled by the said mayor's court, and approved and signed by the Governor and Council of the said colony for the time being, and should be written out fair, and constantly fixed up in some visible and open part of the room or place where the said court should be held, and that it should be lawful for the said mayor's court, with the approbation of the said Governor and Council for the time being, or the major part of them, and also to and for the Court of Directors of the said Company, to vary and alter such table of fees in such manner as they should think fit: And it was further by the said charter ordained and established, that if any person or persons should think him, her or themselves aggrieved by any judgment, sentence or decree of the said mayor's court, such person or persons should or might, within fourteen days after such judgment, sentence or decree of the said court should be entered of record, appeal to the Governor and Council of the said colony for the time being, whom (or any two or more, whereof the Governor, or in his absence, the senior of the Council then residing at Sierra Leone, to be one) his said late Majesty did thereby for himself, his heirs and successors, constitute, nominate and appoint to be a court of record for that purpose to receive such appeals,

and to hear and determine the same, and to do all other acts, matters and things necessarily incident thereto; provided, that if the said Governor and Council should be anyways interested in the event of any such action or suit, no person so interested should sit or act as a judge upon such appeal, but the same should be heard and determined by such of them, the said Governor and Council, as should be no ways interested therein, or any two or more of them; and that in all cases wherein the number of voices should be equal in the determination or judgment upon such appeal, the Governor for the time being, or in his absence, the senior of the Council who should be present, and not interested, should have two voices, which determination should be final if the debt, damages or things directed to be paid, done or delivered, or matters in dispute should not exceed the value of £400; but in case the same should exceed the value of £400, any person or persons who should think him, her or themselves aggrieved by such judgment, sentence or decree made on such appeal, should and might, within fourteen days after the same should be entered of record, appeal to his said late Majesty, his heirs and successors, in Council, (as is usual in cases of appeal from any of the colonies in the West Indies) upon giving security to pay interest (not exceeding the rate of interest which should prevail at the time of pronouncing such judgment, sentence or decree) for the thing adjudged or decreed to be paid, done or delivered, and the costs of such appeal, in case the said judgment, sentence or decree should be affirmed: And did further will and direct that the judgments, sentences and orders of his said late Majesty, his heirs and successors, and of the said Governor and Council, made upon such appeals respectively, should and might be put in execution by the said mayor's court, in such manner as an original judgment of the said court should or might have been, and they the said court were thereby required and commanded to execute the same accordingly; and in case the said mayor's court should refuse or neglect to cause such judgments, sentences or orders to be executed within fourteen days after application made to them for that purpose, then that it should be lawful for, and the said Governor and Council were thereby required and commanded to execute or cause the same to be executed by such ways and means as the said Mayor's Court might have used or employed in executing the same: And did further direct and appoint that there should be within the said town of Freetown a court, which should be called "The Court of Requests for the town of Freetown, and the Factories and Settlements thereof;" and for that purpose willed and required the said Governor and Council, as soon as conveniently might be after the arrival of the said charter, to nominate and appoint some of the principal inhabitants of the town of Freetown aforesaid, not more than twenty-four nor fewer than eight, to be Commissioners to hear and determine suits in a summary way, under such rules, orders and regulations as should from

time to time be given or sent to them under the hands of the Court of Directors of the said Company, which Commissioners, any three or more of them, should have full power and authority to hear and determine all such actions or suits as should be brought before them, where the debt, duty or matter in dispute should not exceed or be more than the value of 40s.; which Commissioners so to be appointed should sit one day in every week from the hour of nine to eleven in the forenoon, or longer if the business should require, to hear and determine all such causes as should be brought before them not exceeding the value aforesaid: And did further by the said charter will, ordain and establish that the Governor and Council of the said colony for the time being should be justices of the peace, and have power to act as justices of the peace in and for the said town of Freetown and throughout the said colony of Sierra Leone, and all the factories and settlements subordinate thereto, in the same or the like manner, and with the same or the like powers, as justices of the peace constituted by any commission or letters patent under the great seal of Great Britain, for any county, city or town corporate in that part of Great Britain called England, did or might exercise such office: And did further will and provide that the said Governor and Council for the time being, or any two or more of them, (whereof the Governor for the time being, or in his absence the senior of the council then residing at Sierra Leone, to be one,) should and might hold quarter sessions of the peace four times in the year within the district aforesaid, and should at all times thereafter be a Court of Record in the nature of a court of oyer and terminer and gaol delivery, and should from time to time and at all times thereafter be commissioners of oyer and terminer and gaol delivery for the trying and punishing of all offenders and offences (high treason only excepted) had, committed or done, or to be had, committed or done within the said town of Freetown or elsewhere within the said colony of Sierra Leone, and any of the said factories or settlements subordinate thereto; and that it should and might be lawful to and for the said justices of the peace and commissioners of oyer and terminer and gaol delivery respectively to proceed by indictment or by such other ways, and in the same or the like manner, as was used in that part of Great Britain called England, as near as the condition and the circumstances of the place and inhabitants would admit of; and for that purpose to issue their warrant or precept to the sheriff of the said district for the time being, commanding him to summon a convenient number of the principal inhabitants within the said district to serve and attend as a grand and petty jury at the said court respectively; and that the said justices of the peace and commissioners of oyer and terminer and gaol delivery respectively, should and might administer to them the usual oath taken in England by grand and petty juries, and also administer to the witnesses who should be produced for or against the party to be tried a proper oath

or affirmation, in such manner as they should esteem most binding on their consciences to oblige them to speak the truth, and that the said justices and commissioners should and might respectively proceed to the arraignment, trial, conviction and punishment of persons accused of any crimes or offences, (high treason only excepted,) in the same or the like manner and form, as near as the condition and circumstances of the place and inhabitants would admit of, as any justices of the peace or commissioners of oyer and terminer and gaol delivery in that part of Great Britain called England usually and legally do; and that the said court might assemble and adjourn at and unto such times and places as they should judge convenient: And did thereby direct that the said Governor should before the Council there, or the major part of them, take an oath faithfully to execute the said offices of Governor, Justice of the Peace, and Commissioner of Oyer and Terminer and Gaol Delivery, together with the oath of allegiance, which oaths they were thereby empowered to administer; and after the taking such oaths, did thereby authorize the said Governor to administer an oath to the Council faithfully to execute the said offices of Council, Justices of the Peace, and Commissioners of Oyer and Terminer and Gaol Delivery, together with the oath of allegiance: And did by the said charter further ordain, establish and appoint, that when any person should die within the said town of Freetown or elsewhere within the said colony of Sierra Leone, or any of the factories or settlements subordinate thereto, and should by his will appoint any person or persons within the said town or colony, or the factories or settlements aforesaid, to be his executor or executors, then and in such case that the said Mayor's Court, upon proof made of the due execution of the said will, should and the same was thereby authorized and required to grant probate of the said will under the seal of the said court, (which seal the said court was authorized by the same to use for that and other purposes,) whereby the person or persons so named executor or executors should have full power and ample authority to act as such, as touching the debts and estates of his, her or their testator; and where any person should die within the town or factories, or limits thereof, intestate, or not having appointed some person or persons to be executor or executors residing within the said town, colony, factories or settlements that in either of these cases the said Mayor's Court should, and the same was thereby empowered and required to grant letters of administration or letters of administration with an authentic copy of the will annexed, (determinable upon any executor named in such will appearing in court and praying probate thereof,) as touching the debts and estate of the person dying intestate or not naming such executor as aforesaid that should be or arise within the limits aforesaid, to such person or persons then residing within the jurisdiction of the said court as should be next of kin to the person so dying or his residuary legatee, and in case there should

be no such person within the said jurisdiction then to the principal creditor of the person so dying, and for want of any creditor appearing, then to such other person or persons as should be thought proper by the said court, every such person or persons to whom such administration should be granted first giving security by bond (respect being had to the value of the estate) to the mayor of the said town, with condition in the form usually given in courts ecclesiastical within that part of Great Britain called England, or as near thereto as the nature and circumstances of the case would admit; and that such person or persons to whom administration should be so granted should and might act in all respects as administrator or administrators touching the debts, effects and estates of such person or persons to whom he, she or they should take out administration as aforesaid, which should be or arise within the said limits: And whereas in pursuance and by virtue and authority of the said letters-patent, such Governor and Council, Mayor's Court, and such other courts and officers as are therein mentioned, were fully constituted, elected and appointed within the said colony of Sierra Leone, and entered upon and thenceforward exercised the various jurisdictions and authorities, offices and functions respectively granted to and vested in them in and by the said charter, and divers laws and statutes and ordinances fit and necessary for and concerning the government of the said colony, and not repugnant to the laws and statutes of this realm, were from time to time made, enacted and declared as well by the said Governor and Council as by the said Court of Directors of the said Company, and divers rules and orders for the better administration of justice were also from time to time made by the said Mayor's Court in further pursuance of the said charter: And whereas by an Act of Parliament passed in the forty-seventh year of the reign of his said late Majesty, intituled, "An Act for transferring to his Majesty certain possessions and rights vested in the Sierra Leone Company, and for shortening the duration of the said Company, and for preventing any dealing or trafficking in the buying or selling of Slaves within the Colony of Sierra Leone," reciting the said Act of Parliament therein first recited, and in part reciting or mentioning the said letters-patent hereinbefore recited; and further reciting that the said company, convinced of the expediency of relinquishing the government and management of the said colony, had expressed a desire to make and had humbly entreated his said late Majesty to accept a surrender to his said late Majesty of all the tract or district of land granted to them by the said letters-patent or charter of justice, or of which the said company were possessed, or which they did then enjoy by purchase or otherwise in addition to the said lands so granted as aforesaid to the said company, and that they were further desirous that their existence as a body politic and corporate should cease and determine within such period of time, shorter than that limited and declared in and by the said first herein recited

statute, as was deemed by the said company sufficient for them in which to settle their affairs: And whereas, for confirming and giving effect to such intended surrender and for limiting the duration of the said company, it was in and by the said now recited act enacted that the said letters-patent or charter of justice and grant therein mentioned and hereinbefore recited, and every matter, clause and thing therein contained, should and the same were thereby declared to be thenceforth null and void, and that the said company should be and they were thereby divested of and from all that tract or district of land commonly called and known by the name or description of the Peninsula of Sierra Leone, and of and from all forts, castles, buildings or estate which had been after purchased or otherwise acquired by the said company in addition thereto, or which then were possessed or claimed by the said company in or about the said peninsula, and that the said tract or district of land, and all forts, castles, buildings or estate so purchased or otherwise acquired, possessed, enjoyed or claimed by the said company, should thenceforth be, and the same and every of them were and was thereby declared and enacted to be fully and absolutely vested in his said late Majesty, his heirs and successors for ever: And whereas it was in the said act now in recital further enacted, that at the expiration of seven years from and after the passing of the said act the said Sierra Leone Company should cease to be a body politic and corporate to all intents, constructions and purposes whatsoever, anything in the said herein first recited act to the contrary thereof in any wise notwithstanding; provided always and it was thereby further enacted, that it should not be lawful for any person or persons whatsoever inhabiting or being, or who should at any time thereafter inhabit or be within the said peninsula or colony of Sierra Leone, either directly or indirectly, to deal or traffic in, buy or sell, or to be aiding or assisting in the dealing or trafficking, in the buying or selling of slaves, either within the said peninsula or elsewhere: And whereas, in pursuance of the said Act of Parliament last recited, the said company did on or about the 27th day of July, in the forty-eighth year of the reign of his said late Majesty, actually and fully surrender to the Governor for the time being of the said colony, by his said late Majesty in that behalf appointed and authorized, the possession of the said colony or peninsula, tract or district of land, and all forts, castles, buildings and estate, which by the true intent and meaning of the said last recited Act of Parliament ought to have been so surrendered, and the same were thenceforth in the possession and under the government of his said late Majesty: And whereas, it being necessary to provide for the immediate government and administration of justice within the said colony, his said late Majesty did soon after the passing of the said act transmit instructions to the said Governor thereof for the time being, directing him to continue in all respects the administration of justice, and the interior government of the said colony, according

to the provisions and directions, powers and authorities contained in the said in part recited letters-patent or charter of justice, as if the same were still in force; and the said Governor and Council, Mayor's Court and other courts so constituted and appointed as aforesaid, and the councillors, judges and officers thereof respectively, and other judges and officers subsequently elected and appointed pursuant to the directions of the said charter, did accordingly continue to exercise their former jurisdictions, functions and authorities, and divers proceedings as well judicial as ministerial were had by and before them, and judgments given and decrees or orders made in the said courts, and wills proved and administrations granted in the said Mayor's Court pursuant to the provisions of the said charter; all which acts and proceedings, subsequent to the annulling of the said letters-patent or charter of justice, it was deemed expedient to ratify and confirm: And whereas it was his said late Majesty's royal will and pleasure, that for the better administration of justice within the said colony, a chief justice thereof should from time to time be appointed during pleasure, who should have such jurisdictions and authorities as are hereinafter mentioned, and who should also be judge of a court of vice-admiralty by his said late Majesty then lately constituted for the said colony, with such jurisdictions as then belonged to courts of vice-admiralty in the West India islands in general, and should be judge also of a court of prize, with such limited jurisdiction therein as his said late Majesty thought fit to grant by his prize commission in that behalf; but that in all other respects the laws and constitution of the said colony, and all the judicial and municipal authorities therein, should during his royal will and pleasure continue such as they were constituted and appointed to be by the said recited letters-patent or charter of justice, or under the authority thereof, as far as the said surrender made to his said late Majesty by the said company, and other the changes of circumstances would allow: And whereas his said late Majesty, in order to provide for the then future government of the said colony or peninsula of Sierra Leone, and all territories thereon depending in Africa, and for the administration of justice therein, did by letters-patent, under the great seal of Great Britain, bearing date at Westminster, the 9th day of August, in the forty-ninth year of his reign, direct that the person appointed or to be appointed Captain-General or Governor-in-Chief of the said colony, after the publication of the said letters-patent, should in the first place take the oaths appointed to be taken by an Act passed in the first year of the reign of King George the First, intituled, "An Act for the further security of his Majesty's Person and Government, and the succession of the Crown in the Heirs of the late Princess Sophia being Protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret Abettors," as altered and explained by an Act passed in the sixth year of his reign, intituled, "An Act for altering the Oath of Abjuration



and the Assurance, and for amending so much of an Act of the seventh year of her late Majesty Queen Anne, intituled, 'An Act for the improvement of the Union of the two Kingdoms,' as after the time therein limited requires the delivery of certain Lists and Copies therein mentioned to Persons indicted of High Treason or Misprision of Treason;" and should also make and subscribe the declaration mentioned in an Act of Parliament made in the twenty-fifth year of the reign of King Charles the Second, intituled, "An Act for preventing Dangers which may happen from Popish Recusants;" and should likewise take the oath usually taken by the Governors in his Majesty's plantations, for the due execution of the office and trust of Captain-General and Governor-in-Chief in and over the said colony or peninsula of Sierra Leone and the territories depending thereon, and for the due and impartial administration of justice; and further should take the oath required to be taken by Governors of plantations to do their utmost that the several laws relating to trade and the plantations be duly observed; which said oaths and declarations the Council of the said colony, or any two members thereof, were thereby empowered and required to tender and administer unto him, and in his absence to the Lieutenant-Governor, if any in the place, or if none, to such person to whom the administration of the government was committed, in manner as thereafter provided; which being performed, that the said Governor should administer to the Chief Justice therein nominated and appointed during pleasure, and the other members of the Council of the said colony, as also to the Lieutenant-Governor, if any in the place, the oaths mentioned in the first recited Act of Parliament, altered as above, as also should cause them to make and subscribe the aforesaid declaration, and administer to them the several oaths for the due execution of their places and trusts; and did further give and grant unto the said Governor full power and authority from time to time and at any time thereafter, by himself or by any other to be authorized by him in that behalf, to administer the oath mentioned in the said first recited act, altered as above, to all and every such person or persons as he should think fit, who should at any time pass into the said colony of Sierra Leone, or any of the factories and settlements within his government, or should be resident or abiding there; and that the said Governor should have full power and authority to suspend any member of the Council of the said colony from sitting, voting or assisting therein, if he should find just cause for so doing; and if there should be any Lieutenant-Governor, him likewise to suspend from the execution of his command, and to appoint another in his stead until his said Majesty's pleasure should be known: And did further by the said letters-patent ordain, will and direct, that the Governor, or in his absence the Lieutenant-Governor or Commander-in-Chief for the time being of the said colony, together with the Council of the said colony, or the major part thereof, should have full

power and authority to make, enact and ordain laws, statutes and ordinances for the peace, welfare and good government of the said colony, so as such laws, statutes and ordinances were not repugnant to the laws and statutes of this realm, but as near as might be agreeable thereto: provided that all such laws, statutes and ordinances, of what nature or duration soever, were within six months or sooner after the making thereof transmitted by the Governor, Lieutenant-Governor, or other Commander-in-Chief of the said colony for the time being, unto his said late Majesty for his approbation or disallowance of the same, as also duplicates thereof by the next conveyance; and in case all or any of the said laws, statutes and ordinances, being not before confirmed by his said late Majesty, should at any time be disapproved and disallowed by his said late Majesty, his heirs and successors, and it should be so signified under his or their sign manual and signet, or by order of his or their Privy Council, unto the Governor, Lieutenant-Governor or other Commander-in-Chief of the said colony for the time being, then that such and so many of the said laws, statutes and ordinances as should be so disapproved and disallowed, should from thenceforth cease, determine and become utterly void and of none effect, anything therein or in the said letters patent contained to the contrary thereof notwithstanding; provided always, that nothing contained in the said letters patent should authorize or empower the said Governor and Council to impose any taxes or duties within the said colony, except such as might thereafter be found necessary for making roads, erecting and repairing public buildings, or other purposes of local convenience and œconomy, and for the interior welfare of the said colony: provided also, that no law, statute or ordinance, whereby any punishment might be inflicted greater than a fine or imprisonment for three months, should be of any force or effect until the same should receive his said late Majesty's approbation: and did by the said letters patent further will and establish, that all laws, statutes and ordinances which then or immediately prior to the annulling the said letters patent or charter of justice therein and hereinbefore in great part recited were in force within the said colony, whether ordained and made by the said charter, or in execution of any authority thereby granted, or otherwise howsoever, should be and continue of the same force and effect in the said colony as if the said charter had not been annulled and made void, except so far as the same related to the territorial or other rights and interests of the said Sierra Leone Company, and to the government, administration, jurisdiction and authority of the said Company in and over the said colony, under the said charter, until such laws, statutes and ordinances should be expressly repealed or varied by some law, statute or ordinance, to be made by the Governor, Lieutenant-Governor or Commander-in-Chief for the time being of the said colony, and the Council of the same, pursuant to the powers vested in them by the letters patent now in recital;

and that all judgments, decrees, sentences, orders, probates of wills, grants of letters of administration, and other judicial or ministerial acts and proceedings, made, passed or had subsequent to the annulling of the said charter, and before the publication of the letters patent now in recital in the said colony, should be and be deemed and taken to be of the same force and validity as if the said charter had not been annulled or repealed, but still continued in force: And did further ordain, will and direct, that the Governor, or in his absence the Lieutenant-Governor or other Commander-in-Chief of the said colony for the time being, and the Council of the same, should have, use, exercise and enjoy all and singular the offices, jurisdictions, powers and authorities within the said colony, which in and by the said charter therein and herein recited were given and granted to the Governor and Council which the Court of Directors of the said Sierra Leone Company were thereby empowered to constitute and appoint, save and except as was otherwise directed or provided in and by the said letters patent now in recital. And did further thereby give, grant and appoint, that there should be within the said town of Freetown a body politic and corporate, by the name and style of the Mayor and Aldermen of Freetown; and that such body politic and corporate should consist of a Mayor and three Aldermen, and should have perpetual succession, and should and might be able and capable in law to sue and be sued in any courts and causes whatsoever, and should have a common seal for the business and affairs of the said Corporation, which common seal they and their successors might break and change at their pleasure; and that the persons bearing the offices of Mayor and Aldermen of Freetown at the time of the publication of the letters patent now in recital, by virtue of an election or appointment made under and by authority of the said annulled charter, though since the same was annulled, should be and continue respectively Mayor and Aldermen of Freetown, upon the conditions and under the limitations contained in the said charter; and that all the regulations and provisions contained in the said charter in respect to the annual election of the Mayor and the determination of his office, and that of the Aldermen, and the filling up of their places when vacant by death, absence or removal, should be observed and carried into execution in respect of the said Mayor and Aldermen constituted by the letters patent now in recital, as fully as if the same had been therein repeated. And did further will and ordain that the person bearing the office of sheriff at the publication of the letters patent now in recital, by virtue of any election or appointment made under and by authority of the said annulled charter, should notwithstanding retain such office until the time appointed in the said charter for the annual determination of such office, to act until the 29th day of September then next ensuing, and should then be succeeded by a new Sheriff, to be elected and appointed by the Governor and Council of the said colony, at the time and in manner and form as directed by the

said charter; and that the Governor and Council of the said colony should have the same powers of electing and appointing the Sheriff as were in and by the said annulled charter given to the Governor and Council appointed by the said Sierra Leone Company and its Directors; and did further direct that the said Sheriff so appointed or to be appointed as aforesaid should execute and perform all such or the like offices and duties, and have, possess and exercise all such or the like powers and authorities, as the Sheriff appointed under the said annulled charter, while the same remained in force. And did further by the said letters patent will and appoint that the Chief Justice of the said colony during his continuance in the said office, and his successors the Chief Justices of the said colony, should be Recorders of Freetown, and with the Mayor and Aldermen of Freetown for the time being, should be and they were thereby constituted a Court of Record, by the name of "The Court of the Recorder of Freetown," and that the said Court should have, use and exercise the like jurisdictions, powers and authorities in all respects within the said colony of Sierra Leone, in like cases, and between the like persons and parties, as might have been had, used and exercised by the said Mayor's Court of Freetown, under and by virtue of the said therein and hereinbefore recited charter of justice, while the same remained in full force and virtue, except only where it was otherwise therein expressly declared or provided; and that the said Court of the Recorder of Freetown should also proceed in the same manner and form, and subject to the same rules as to trial by jury and otherwise, and to the same remedy or right of appeal, as were in the said therein and hereinbefore recited charter directed and provided in respect of the said Mayor's Court of Freetown, except as aforesaid; and that all rules of practice made by the said Mayor's Court of Freetown, and then or at the time of the annulling of the said charter remaining in force, should be observed and followed in and by the said Court of the Recorder of Freetown, until by the authority of that court the same should be varied or repealed: provided always, and it was thereby further ordained and directed, that the Chief Justice and Recorder should preside in the said court, which should be held before him and the Mayor and Aldermen of Freetown for the time being, or three of them at least, that is to say, either the Mayor and two of the said Aldermen, or the three Aldermen, except when such Chief Justice and Recorder was a party to or interested in any suit, action or proceeding depending in the said court, in which case it was provided that such suit, action or proceeding should be adjudged, tried and determined by the Mayor and Aldermen alone, the Mayor presiding; and if two or more of the said Judges should be parties to or interested in any such suit, action or proceeding, then that the remaining Judges of the said court should and might adjudge, try or determine the same, the senior Alderman presiding when the Chief Justice and Recorder, and Mayor,

should be for the reason aforesaid incompetent to sit. Provided further, that in case of the death, absence or long incapacity by sickness of the Chief Justice and Recorder, the Governor, Lieutenant-Governor or other Commander-in-Chief of the said colony for the time being, should and might appoint the most competent and proper person within the colony to act as Chief Justice and Recorder during such absence or incapacity, or in the case of death, until a successor should be appointed by his said late Majesty, and should enter on the duties of the said office, which acting Chief Justice and Recorder should be competent to preside in the said court, and to exercise all the jurisdictions, offices, functions and authorities of the said Chief Justice and Recorder, until superseded by his return, or his becoming again capable, or by such new appointment as aforesaid. Provided also, that in case of any difference in opinion between the judges of the said court, touching the giving of any judgment or sentence, or the decision of any question depending before them, the majority should determine; and further, that when opinions should be equally divided, the Chief Justice and Recorder, or the judge presiding in his stead, should have a double or casting voice. And did further direct and appoint, that from and after the publication of the said letters patent in the said colony at the period thereafter appointed, the authority and functions of the said Mayor's Court of Freetown should cease and determine, to be thenceforth assumed and exercised by the said court of the Recorder of Freetown; and that all actions, suits and proceedings then depending in the said Mayor's Court of Freetown should be respectively transferred in their then present condition to, and subsist and depend respectively, and be prosecuted, tried and determined respectively in the said court of the Recorder of Freetown, just as if the same had been commenced respectively in the said last-mentioned court; and that all records, muniments and proceedings whatsoever of or belonging to the said Mayor's Court of Freetown, should be delivered over to and deposited with the records of the said court of the Recorder of Freetown; and that from and after the same period, the said court of the Recorder of Freetown should have and exercise such and the same jurisdictions, powers and authorities to grant probates of wills and letters of administration as were theretofore had and exercised by the said Mayor's Court of Freetown, pursuant to the said annulled charter. And did further will and appoint, that the Governor, Lieutenant-Governor or other Commander-in-Chief, and Council, for the time being of the said colony, should nominate and appoint a proper person to be Accountant-General of the said court of the Recorder of Freetown, who should execute and perform the same offices, trusts, matters and things as the Accountant-General of the said Mayor's Court of Freetown was directed and empowered to execute and perform by the said annulled charter therein and hereinbefore recited, (save and except as to the direction and controul of the Court of Directors of the Sierra

Leone Company), subject to the orders of the said court of the Recorder of Freetown, and to such directions in respect to the investment or security of the money belonging to suitors of the said court, and the securing and accounting for the same, as might be given from time to time by the said Governor, Lieutenant-Governor or other Commander-in-Chief, and Council, of the said colony for the time being, or by his said late Majesty in his Privy Council. And did further thereby will and establish, that the Governor, Lieutenant-Governor or other Commander-in-Chief, and Council, of the said colony for the time being, should be, and they were thereby constituted a Court of Record to receive, hear and determine appeals from the said court of the Recorder of Freetown, in the like cases, and subject to the like limitations, and rules and directions, as to their proceeding therein, and subject also to the like right of appeal from their judgment, sentence or decree to his said late Majesty in his Privy Council, when the debt, damages or thing or matter in dispute should exceed the value of 400*l.*, and upon the like condition as to security to be thereupon given by the appellant, as were in and by the said annulled charter directed and provided in respect of appeals to the Governor and Council appointed by the said Sierra Leone Company or its Directors, and from them to his said late Majesty in his Privy Council respectively. And did further thereby ordain, will and establish, that there should be within the said town of Freetown a court, which should be called "The Court of Requests for the Colony of Sierra Leone," and which should have and exercise such and the same jurisdiction, power and authority in all actions and suits brought before them, where the debt, duty or matter in dispute should not exceed the value of 40*s.*, in the same way, and subject to the same rules and regulations, as were in and by the said recited letters patent or charter of justice mentioned, contained and provided in respect of the Court of Requests thereby constituted. And did further ordain and appoint that the Governor, Lieutenant-Governor or Commander-in-Chief, and the members of the Council of the said colony for the time being, should be, and the same were thereby constituted and appointed to be justices of the peace in and for the said town of Freetown, throughout the said colony of Sierra Leone and all the territories dependent thereon, with all such and the same jurisdictions, powers and authorities as lawfully could or might be exercised by justices of the peace duly constituted by his said late Majesty in that part of the United Kingdom called England, within the county, city or town corporate for which they were so constituted, so far as the laws of this realm were applicable to and in force in the said colony. And did further ordain, will and establish, that the Chief Justice and other members of Council of the said colony for the time being (without the Governor, Lieutenant-Governor or Commander-in-Chief) should and might hold quarter-sessions of the peace four times in the year within the said colony, and should from time to time and at

all times thereafter be Commissioners of Oyer and Terminer and Gaol Delivery, for the trying of all crimes and misdemeanours had, committed or done, or to be had, committed or done within the said town of Freetown or elsewhere within the said colony of Sierra Leone, or any territory dependent thereon; and that it should and might be lawful to and for the said Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery respectively, to proceed by indictment, or by such other ways and means, and in the same or like manner, as were used in that part of the United Kingdom called England, as near as the condition and circumstances of the said colony and the inhabitants thereof would admit of; and for those purposes to issue their warrants or precepts to the sheriff of the said colony for the time being, commanding him to summon a convenient number of the principal inhabitants within the said colony to serve and attend as grand and petty jurors at the said courts respectively; and that the said Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery respectively should and might administer to such jurors the oaths usually taken in England by grand and petty jurors respectively, and also should and might administer a proper oath or affirmation to the witnesses who should be produced for or against the party accused; and that the said Justices and Commissioners should and might respectively proceed to the arraignment, trial, conviction and punishment of persons accused of any crimes or offences, in the same or the like manner and form, as near as the condition and circumstances of the place and inhabitants would admit of, as any Justices of the Peace or Commissioners of Oyer and Terminer and Gaol Delivery usually and lawfully do within that part of the United Kingdom called England; and that the said courts might assemble and adjourn at and to such times and places as they might adjudge convenient. And did further direct and appoint, that as well the said Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery, as the said Chief Justice and Recorder, and other Judges of the said Court of the Recorder of Freetown, should prior to their entering upon the execution of their said respective offices take an oath before the Governor, Lieutenant-Governor, or Commander-in-Chief, and Council, for the time being, faithfully to execute their said respective offices, together with the oath of allegiance, which oaths the said Governor, Lieutenant-Governor, or Commander-in-Chief, and Council, for the time being were thereby empowered to administer. And did further by the said letters-patent give and grant unto the Governor of the said colony for the time being full power and authority from time to time to constitute and appoint all such officers and ministers as might be necessary in the said colony for the better administration of justice and putting the laws in execution, and for whose appointment his said late Majesty had not otherwise therein provided, and to administer or cause to be administered to them the usual oath or oaths for the due execution of

their respective offices. And did thereby further give and grant unto the said Governor full power and authority, when he should see cause, or should judge any offender or offenders, in criminal matters, or for any fines or forfeitures due unto his said late Majesty, fit objects of his mercy, to pardon all such offenders, and to remit all such offences, fines and forfeitures, (treason and wilful murder only excepted,) and that in such cases he should have power upon extraordinary occasions to grant reprieves to the offenders, until and to the intent that his said late Majesty's pleasure might be known therein. And did further authorize and empower the said Governor to collate any person or persons to any churches, chapels or ecclesiastical benefices within the said colony, as often as any of them should happen to be void. And did further give and grant unto the said Governor, by himself, or by his captains and commanders by him to be authorized, full power and authority to levy, arm, muster, command and employ all persons whatsoever residing within the said colony and the territories dependent thereon, and as occasion should demand to march them from one place to another, or to embark them, for the resisting and withstanding of all enemies, pirates and rebels, both at sea and land, and such enemies, pirates and rebels, if there should be occasion, to pursue and prosecute in or out of the limits of the said colony; and if it should so please God, them to vanquish, apprehend, and take, and being taken, either according to law to put to death, or to keep and preserve alive, at his discretion; and to execute martial law in time of invasion, war, or other times when by law it might be executed, and to do and execute all and every other thing and things which to the Captain-General and Governor-in-Chief of the said colony did or of right should belong; And did further give and grant unto the said Governor full power and authority, by and with the advice and consent of the said council, to erect, raise, and build in the said colony of Sierra Leone, and the territories depending thereon, such and so many forts and platforms, castles, cities, boroughs, towns, and fortifications, as he by the advice aforesaid should judge necessary, and the same or any part of them to fortify and furnish with ordnance, ammunition, and all sorts of arms fit and necessary for the security and defence of the said colony, and by the advice aforesaid, the same again, or any of them, to demolish or dismantle, as might be most convenient: And forasmuch as divers mutinies and disorders might happen by persons shipped and employed at sea during the time of war, and to the end that such as should be shipped and employed at sea during the time of war might be better governed and ordered, his said late Majesty did by the said letters-patent give and grant unto the said Governor of the said colony full power and authority to constitute and appoint captains, lieutenants, masters of ships, and other commanders and officers, and to grant to such captains, lieutenants, masters of ships, and other commanders and officers, commissions to execute the law martial



during the time of war, according to the directions of an act passed in the twenty-second year of the reign of his said late Majesty King George the Second, intituled "An Act for amending, explaining, and reducing into one Act of Parliament the laws relating to the government of His Majesty's ships, vessels, and forces by sea," as the same is altered by an act passed in the nineteenth year of the reign of his said late Majesty King George the Third, Our royal father, intituled "An Act to explain and amend an Act made in the twenty-second year of the reign of his late Majesty King George the Second, intituled 'An Act for amending, explaining, and reducing into one Act of Parliament the laws relating to the government of His Majesty's ships, vessels, and forces by sea ;'" and to use such proceedings, authorities, punishments, corrections, upon any offender or offenders who should be mutinous, seditious, disorderly, or any way unruly, either at sea or during the time of their abode and residence in any of the ports, harbours, or bays of the said colony, as the case should be found to require, according to martial law, and the said directions during the time of war as aforesaid: Provided that nothing therein contained should be construed to the enabling of him, or of any by his authority, to hold plea or to have any jurisdiction of any offence, cause, matter or thing committed or done upon the high sea, or within any of the havens, rivers, or creeks of the said colony and territories under his government, by any captain, lieutenant, commander, master, officer, seaman, soldier, or other person whatsoever, who should be in his said late Majesty's actual service and pay, in or on board of any ship of war or other vessel acting by immediate commission or warrant from the commissioners for executing the office of lord high admiral of the United Kingdom of Great Britain and Ireland, or from the lord high admiral for the time being, under the seal of the admiralty; but that such captain, commander, lieutenant, master, officer, seaman, soldier, or other person so offending should be left to be proceeded against and tried as their offences should require, either by commission under the great seal of the United Kingdom of Great Britain and Ireland, pursuant to the statute of the twenty-eighth of Henry the Eighth, or by commission from the said commissioners for executing the office of lord high admiral for the time being, according to the afore-mentioned act, intituled "An Act for amending, explaining, and reducing into one Act of Parliament the laws relating to the government of his Majesty's ships, vessels, and forces by sea," as altered and amended by the said act passed in the nineteenth year of the reign of his said late Majesty, and not otherwise; provided nevertheless, that all offences and misdemeanors committed on shore by any captain, commander, lieutenant, master, officer, seaman, soldier, or other person whatsoever, belonging to any ship of war or other vessel acting by immediate commission or warrant from the said commissioners or lord high admiral for the time being as aforesaid, might be tried and

punished according to the laws of the place where any such offences or misdemeanors should be so committed on shore, notwithstanding such offenders were in his said late Majesty's actual service, and borne in his pay on board any such ship of war or other vessels acting by immediate commission or warrant from the said commissioners or lord high admiral for the time being as aforesaid, so that such offender shall receive no protection for the avoiding of justice for such offences so committed on shore, from any pretence of his being employed in his said late Majesty's service at sea: And did further will and appoint that all public monies which should be raised by any law, statute, or ordinance to be thereafter made within the said colony, should be issued out by warrant from the said governor, by and with the advice and consent of the council of the said colony, and disposed of for the purpose directed and appointed by such law, statute, or ordinance, and not otherwise: And did further give and grant unto the said Governor full power and authority, by and with the advice and consent of the said council, to settle and agree with the inhabitants of the said colony for such lands, tenements, and hereditaments as then were or thereafter should be in his said late Majesty's power to dispose of, and them to grant to any person or persons, upon such terms, and under such moderate quit-rents, services and acknowledgments to be thereupon reserved unto his said late Majesty, as he the said Governor, by and with the advice aforesaid, should think fit; which said grants were directed to pass and be sealed by the seal of the said colony, and being entered upon record by such officer or officers as were or should be appointed thereunto, were declared to be good and effectual in law against his said late Majesty, his heirs and successors: Provided always, and it was thereby further ordained, that no grant, lease, or demise at any time theretofore made by or under the authority of the said Sierra Leone Company, prior to the said surrender to his said late Majesty of their territorial rights and interest in the said colony and its dependencies, pursuant to the Act of Parliament aforesaid, whether the same were by deed or writing, or by parol only, should be in any manner impeached or avoided, but that the same should be and be taken to be as valid and effectual, to all intents and purposes, against his said late Majesty, his heirs, and successors, as if the said surrender pursuant to the said Act of Parliament therein and hereinbefore recited had not been made; and that all such grants, leases, and demises of lands or tenements within the said colony, should be confirmed by the said Governor under the seal of the said colony, if the grantees, lessees, or parties beneficially interested therein should apply for and request such confirmations: And did further give and grant unto the said Governor full power and authority to order and appoint fairs, marts, and markets; and also such and so many ports, harbours, bays, havens, and other places for the convenience and security of shipping, and for the better loading and unloading of goods and merchandize, in such and so many places as by him, by and with the advice

of the said council, should be thought fit and necessary: And did further require and command all officers and ministers, civil and military, and all other inhabitants of the said colony and the territories dependent thereon, to be obedient, aiding and assisting unto the said Governor, in the execution of the several powers and authorities in the said letters patent contained; and in case of his death or absence out of the said colony and the territories dependent thereon, to be obedient, aiding, and assisting unto such person as should be appointed by his said late Majesty's Lieutenant-Governor or Commander-in-Chief of the said colony for the time being, to whom his said late Majesty did by the same give and grant all and singular the powers and authorities therein granted to the governor of the said colony, to be by him executed and enjoyed during pleasure, or until the arrival of the Governor within the said colony; and if, upon the death or absence of the Governor from the said colony and territories dependent thereon, there was no person in the place commissioned by his said Majesty to be Lieutenant-Governor or Commander-in-Chief of the said colony, then that the member of council next in seniority to the Chief Justice for the time being (to which Chief Justice his said late Majesty did by the said letters-patent grant rank and precedency above and before all subjects whomsoever in the said colony, the Governor, Lieutenant-Governor, or other Commander-in-Chief of the said colony for the time being only excepted; and that the said Chief Justice should be a member of council by virtue of his office, and preside therein in the absence of the Governor or Lieutenant-Governor; provided always, that he should in no case succeed to the chief command of the said colony), who should be resident within the said colony, should take upon him the administration of the government of the said colony, and execute the several powers and authorities contained in the said letters-patent until the return of the said Governor, if absent from the said colony, or until, in case of the death of the said Governor, his said late Majesty's further pleasure were known therein. And whereas, by an Act of Parliament made and passed in the first and second year of our reign, intituled "An act for abolishing the African Company, and transferring to and vesting in his Majesty all the Forts, Possessions, and Property now belonging to or held by them," it was, among other things, enacted, that from and after the 3d day of July, 1821, the said corporation of the company of merchants trading to Africa should wholly cease and determine and be abolished, and the said Company of Merchants trading to Africa should no longer be or be deemed to be a body politic or corporate; and that all grants made to the said Company by or under or in pursuance of certain therein recited Acts of Parliament, or any or either of them, or in pursuance of any thing therein contained, should, and the same were thereby declared to be thenceforth null and void; and that the said Company should be, and the said Company were thereby divested of and from all forts, castles, buildings, possessions, or estate or rights which

were given to the said Company by or under or in pursuance of the said therein recited acts, or any or either of them, or which had been since purchased or otherwise acquired by the said Company in addition thereto, or which then were possessed or claimed or held by the said Company on the said coast; and that the said forts, castles, buildings, possessions, estate, and rights so acquired, possessed, enjoyed or claimed, or then held by the said Company, should thenceforth be, and the same and every of them were, and were thereby declared and enacted to be fully and absolutely vested in us, our heirs, and successors for ever: And whereas it was further enacted in and by the said Act of Parliament, that from and after the passing of that act, it should and might be lawful for us to order and direct that all or any of the forts and possessions therein and hereinbefore-mentioned, and also any territories, islands, or possessions on the west coast of Africa, between the twentieth degree of north latitude and the twentieth degree of south latitude, which then did or at any time thereafter should or might belong to us, should be annexed to or made dependencies on the colony of Sierra Leone; and that from the date of their being so annexed or made dependencies on the said colony, they should be subject to all such laws, statutes, and ordinances as should be in force in the said colony, or as should at any time thereafter be made, enacted, or ordained by the Governor and Council of the said colony, and should not be disallowed by us, in the same manner as if the said forts, possessions, territories, or islands had originally formed part of the said colony of Sierra Leone: Now know ye, that we, having considered the premises, and being willing and desirous to provide for the future good government, as well of the said forts and possessions so heretofore acquired, purchased, enjoyed, claimed, or held by the said African Company, as of all and every other the territories, islands, or possessions on the west coast of Africa, between the twentieth degree of north latitude and the twentieth degree of south latitude, which now do or at any time hereafter shall or may belong to us, our heirs, and successors, do by these presents, by virtue and in pursuance of the said recited act, and of our special grace, certain knowledge and mere motion, order, direct, and appoint, that all and every of the said forts and possessions so heretofore acquired, purchased, enjoyed, claimed, or held by the said African Company, and also all territories, islands, and possessions which now do or at any time hereafter shall or may belong to us, our heirs, and successors, on the west coast of Africa, between the twentieth degree of north latitude and the twentieth degree of south latitude, shall be annexed to and made dependencies on, and the same are hereby annexed to and made dependencies on the said colony of Sierra Leone; and that from the publication of these presents in the said colony of Sierra Leone, as hereinafter directed, the same shall be and they are hereby made subject to all such laws, statutes, and ordinances as shall be in force in our said colony, or as shall at any time hereafter be made, enacted, or ordained by the Governor and

Council of the said colony, and shall not be disallowed by us, our heirs, and successors, in the same manner as if the said forts, possessions, territories, or islands had originally formed part of the said colony of Sierra Leone: And we do further by these presents, for us, our heirs, and successors, will, establish, and ordain, that from and after the publication of these presents, there shall be nine or more councillors, advising and assisting to our Governor of our said colony of Sierra Leone for the time being: And we do by these presents nominate, make, ordain, and constitute our trusty and well-beloved Edward Fitzgerald, our chief justice, or our chief justice of our said colony for the time being; our trusty and well-beloved Daniel Molloy Hamilton, our advocate, or our advocate of our said colony for the time being; our trusty and well-beloved Dudley Feriday, our secretary, or our secretary of our said colony for the time being; our trusty and well-beloved Thomas Stuart Buckle, our surveyor of lands, or our surveyor of lands of our said colony for the time being; our trusty and well-beloved Kenneth Macaulay, esquire, our trusty and well-beloved Alexander Grant, esquire, our trusty and well-beloved Joseph Reffell, esquire, our trusty and well-beloved John O'Neill Walsh, esquire, our trusty and well-beloved Thaddeus O'Meara, esquire, our trusty and well-beloved Andrew Nicoll, doctor of medicine, our trusty and well-beloved John Hopc Smith, esquire, and our trusty and well-beloved William Dawson, esquire, thenceforth councillors of our said colony, to continue in their said office of councillors during their natural lives, unless suspended from their said office, or absent from the said colony for the space of one year without leave given them under our royal signature, or until other councillors shall be chosen and appointed by us, under our signet and sign manual, in their stead: And we do further hereby give and grant to our said Governor full power and authority to suspend any of the members of our said council from sitting, voting, or assisting therein, if he shall find just cause for so doing; and if it shall at any time happen, that by the death, departure out of our said colony, or suspension of our said councillors, or otherwise, there shall be a vacancy in our said council, (any five whereof we do hereby appoint to be a quorum,) our will and pleasure is that our said Governor do signify the same unto us by the first opportunity, that we may, under our signet and sign manual, constitute and appoint others in their stead; but, that our affairs at that distance may not suffer from want of a due number of councillors, if ever it shall happen that there be less than nine of them residing in our said colony, we do hereby give and grant unto our said Governor full power and authority to choose as many persons out of the principal inhabitants thereof as shall make up the full number of our said council to be nine, and no more; which persons so chosen and appointed by him shall be to all intents and purposes councillors in our said colony, until either they shall be confirmed by us, or that, by the nomination of others by us under

our sign manual and signet, our said council shall have nine or more councillors in it resident in our said colony: And we do further by these presents ordain, will, and appoint, that our Governor of our said colony, or in his absence, our Lieutenant-Governor or Commander-in-Chief for the time being of our said colony, together with our council of the same, or the major part thereof, shall have full power and authority to make, constitute, and ordain laws, statutes, and ordinances for the public welfare and good government of our said colony, under the like conditions, and subject to the same limitations and restrictions, as those imposed in that behalf on the Governor and council of our said colony in the letters-patent of his said late Majesty hereinbefore recited; but, to the end that nothing may be done or passed to the prejudice of us, our heirs, and successors, by our said council, we further ordain by these presents, that our Governor of our said colony, or in his absence, our Lieutenant-Governor or Commander-in-Chief for the time being, may and shall have a negative voice in the making and passing of all laws, statutes, and ordinances as aforesaid: And we do further by these presents will, ordain, and appoint, that from and after the publication of these presents in our said colony of Sierra Leone, as hereinafter directed, our court of record in our said colony, called and known by the name of "The Court of the Recorder of Freetown," shall consist of our chief justice of the said colony for the time being, and two such members of the council as shall be appointed by the Governor of our said colony for the time being assistant judges thereof, in lieu of the mayor and aldermen of Freetown for the time being, as ordained and appointed in and by the letters patent of his said late Majesty hereinbefore recited; and we do hereby will and ordain, that they or any two of them (whereof our said chief justice for the time being resident in Freetown to be one), shall, and the same are hereby authorized to hear and determine all civil suits, actions, and pleas between party and party that shall or may arise or happen, or that have already arisen or happened within our said colony of Sierra Leone, or any of the forts, settlements, islands, or territories subject or subordinate thereto, except when the *cause of action or suit shall not exceed the value of 40s.*: Provided always, and it is hereby further ordained and directed, that if such chief justice and recorder, or any of the said assistant judges, should be any ways interested in the event of any such action or suit, no such chief justice and recorder or assistant judge, shall sit or act as a judge in such suit or action, but the same shall be heard and determined by such of them as shall be no ways interested therein; and in all cases where the number of voices shall be equal in the determination of any action or suit, the chief justice, or in his absence the senior assistant judge present, shall have two voices: And we do further direct, that the said Court of the Recorder of Freetown hereby constituted shall proceed in the same manner and form, and sub-

ject to the same rules as to trial by jury and otherwise, and to the same remedy and right of appeal, as were in and by the said letters patent hereinbefore recited, directed, and provided in respect of the Court of the Recorder of Freetown, constituted by such letters patent; and that all rules of practice made by the one court, and now or at the time of the publication of these presents remaining in force, shall be observed and followed in and by the other, until by the authority of that other the same be varied or repealed: And we do further will and direct, that no action, cause, suit, or proceeding depending in the said Court of the Recorder of Freetown at the publication of these presents, shall be avoided, abated, discontinued, or annulled for or by reason of any change in the constitution of the said court effected by these presents, but that the same shall be respectively transferred in their then present condition to, and subsist and depend respectively, and be prosecuted, tried, and determined respectively, in the said Court of the Recorder of Freetown hereby constituted and established to all intents and purposes as if they had been respectively first commenced, had, brought, and prosecuted in the said last-mentioned court: And we do further will and direct, that each person so nominated or appointed one of the assistant judges of the said Court of the Recorder of Freetown as aforesaid, shall, prior to the entering upon the execution of his said office, take an oath before the Governor, Lieutenant-Governor, or other Commander-in-Chief for the time being, for the due discharge of the same, which oath the said Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, is hereby empowered to administer: And we do further by these presents will and establish, that our said Governor, Lieutenant-Governor, or other Commander-in-Chief, and council, of our said colony for the time being shall be, and they are hereby constituted a court of record to receive, hear, and determine appeals from as well the said Court of the Recorder of Freetown, as from any other superior court of common law now established or to be in future established in our said colony pursuant to these presents, in the like cases, and subject to the like limitations, rules, and directions as to their proceedings therein, and subject also to the like right of appeal from their judgment, sentence, or decree, to us in our Privy Council, when the debt, damages, or things, or matter in dispute shall exceed the value of 400*l.*, and upon the like condition as to security to be thereupon given by the appellant, as were in and by the said letters patent hereinbefore recited, directed, and provided in respect of appeals to the Governor and Council of the said colony, and from them to his said late Majesty in his Privy Council respectively: Provided always, and it is hereby ordained, that no such member or members of our said council as shall be at that time judge or judges of the court from which such appeal shall be made, shall be entitled or permitted to vote upon such appeal; provided also, that no appeal be allowed from any

sentence, order, or decree of our Courts of Chancery of our said colony, to us or our Privy Council, unless the debt, damage, or thing or matter in dispute, shall exceed the like sum or value of 400*l.* sterling; and that such appellant do also give good security that he will effectually prosecute such appeal, and answer the condemnation money, and pay also such costs and damages as shall be by us awarded in case such sentence, order, or decree so appealed from be affirmed: Provided nevertheless, and our further will and pleasure is, that when the matter in question relates to the taking or demanding of any duty payable to us, or to any fee of office or annual rent, or other such like matter or thing, where the right in future may be bound, in all such cases an appeal may be had from the judgment of our said Governor and Council as aforesaid, or from the sentence, order, or decree of our Court of Chancery of our said colony, to us in our Privy Council, though the immediate sum or value appealed for be of a less amount than 400*l.* sterling: And our further pleasure is, and we do hereby direct and appoint, that our said Governor shall and may keep and use the public seal of our said colony of Sierra Leone for sealing all instruments whatsoever that do and ought to pass the great seal of our said colony under his said government: And whereas writs of inquiry of idiots and lunatics may and ought to issue out of our Court of Chancery in our said colony, and be returnable in our said court, and great trouble and charges may arise if occasion be to resort unto us, our heirs and successors, for directions respecting such idiots and lunatics, and their estates, we do by these presents give and grant unto our said Governor full power and authority to give orders and warrants from time to time for preparing grants of the custodies of such idiots and lunatics and their estates, as are or shall be found by inquisition thereof, taken or to be taken, and returned or to be returned into our said Court of Chancery of our said colony, and thereupon to make and pass grants and commitments under our great seal of our said colony, of the custodies of all and every such idiots and lunatics and their estates, to such person or persons, suitors in that behalf, as according to the rules of law, and the use and practice in those and the like cases, he shall judge meet for that trust; the said grants and commitments to be made in such manner and form, or as nearly as may be, as hath heretofore been used and accustomed in making the same under the great seal of this kingdom, and to contain such and the like apt and convenient covenants, conditions, and agreements on the part of the committees and grantees to be performed, and such security to be by them given, as shall be requisite and needful: And we do further by these presents order, direct, and establish, that from and after the expiration of three months from the publication of these presents hereinafter directed, the authority of the Court of Requests for the colony of Sierra Leone, for the recovery of small debts within the said colony, as constituted by the letters patent of his said late



Majesty hereinbefore recited, shall cease and be abolished: And we do by these presents authorize and require our said Governor, by and with the advice and concurrence of our said council, prior to the expiration thereof, to nominate and appoint certain justices or others commissioners in and for particular districts, upon whom the authority of the said court thenceforward to cease and be abolished in and throughout the said colony as aforesaid may regularly devolve; and that the said justices or other commissioners may and shall proceed to the hearing and determining of all matters of debt or damage under 40s. value, in the same or the like manner and form, as near as circumstances will admit of, as any commissioners of requests usually and lawfully do within that part of our united kingdom called England; and that such commissioners shall assemble at such times and places as our said Governor, with the advice and concurrence of our Council as aforesaid, shall from time to time appoint: And we do further hereby direct and establish, that from and after the publication of these presents, our Governor, Lieutenant-Governor, or Commander-in-Chief for the time being of our said colony, shall and may do, execute, and perform all that is necessary for the granting of licences for marriages, as also for the probate of wills and granting of administrations for, touching or concerning any interest or estate which any person or persons shall have within our said colony or its dependencies, in such or the like manner and form as our Governors, Lieutenant-Governors, or other Commanders-in-Chief of our provinces in America, are used and authorized to do, execute, and perform the same: And our further will and pleasure is, that from thenceforth such jurisdictions, powers, and authorities as were given to the Court of the Recorder of Freetown aforesaid, and to the said Mayor of Freetown, in and by the said letters patent hereinbefore recited, in respect to grants of probates of wills and letters of administration, shall cease and determine; but we do nevertheless will and ordain, that no probates issued or letters of administration granted in the said court pursuant to the provisions of the said letters patent, prior to the publication of these presents, shall be impeached or avoided by the cessation of the authority and functions of the said court in the premises, but that the same shall, and the same are hereby ordained to remain in as full force and effect as if the said court still possessed the powers and authorities to grant probates of wills and letters of administration conferred upon it by the said letters patent: And we do further by these presents give and grant unto our said Governor full power and authority, with the advice and consent of our said Council, to erect and constitute judicatories and courts of record, or other courts, to be held of us, our heirs and successors, for the hearing and determining all and all manner of causes, as well criminal as civil, arising or happening within our said colony, or between persons inhabiting or residing there; as also to issue

from time to time special commissions of oyer and terminer and gaol delivery, limited to the districts and crimes or misdemeanors specified in such commissions, and for the awarding and making out execution thereupon; to which courts and judicatories we do hereby give and grant full power and authority from time to time to administer oaths for the better discovery of truth in any matter in controversy or depending before them, together with all other reasonable and necessary powers, authorities, fees, and privileges belonging thereto: And we do hereby further give and grant unto our said Governor full power and authority to constitute and appoint judges, and in cases requisite, commissioners of oyer and terminer, justices of the peace, and other necessary officers and ministers in and through our said colony, for the better administration of justice and putting the laws in execution, and to administer or cause to be administered to them their several and respective oaths for the due and faithful performance of their duties in their several and respective offices, before undertaking the execution of the same; provided nevertheless, and be it further ordained, that no election or appointment of any sheriff or other officer or minister, pursuant to these presents, shall or shall be deemed or construed to alter or abridge the power and right of the sheriff of our said colony, appointed pursuant to the letters patent hereinbefore recited, to summon juries, or to execute and make return of all processes and the like, of the said Court of the Recorder of Freetown, or of any other courts erected or to be erected within that tract or district known by the name of the Peninsula of Sierra Leone, bounded as aforesaid: And in case of the death, absence, or removal of our Lieutenant-Governor of our said colony, we do further by these presents authorize and empower our Governor of our said colony, being at the time of such appointment personally resident within our said colony, to nominate or appoint any person resident within our said colony, whom he shall judge the most proper and fitting, to be our Lieutenant-Governor thereof, until our pleasure thereupon shall be known; provided it shall appear to our said Governor that the administration of the government of our said colony, by the member of our said council next in seniority to the chief justice thereof for the time being, may not tend to the good of our service and the welfare of our said colony: And we do further ordain, will, and establish, that within thirty days after these presents shall arrive within our said colony of Sierra Leone, our Governor, Lieutenant-Governor, or other Commander-in-Chief of our said colony for the time being, shall cause these our letters patent to be published and proclaimed, and the contents thereof to be publicly known within the said colony, and that from and immediately after such publication the same shall be in full force and effect within our said colony: Provided always, and we do hereby reserve unto ourself, our heirs and successors, full power and authority to revoke, vary, alter, annul, and make void these presents, and

every or any clause, matter, or thing herein contained, and to make such new, other, or further ordinances and appointments for the government of our said colony, and for the administration of justice within the same, as to us, our heirs and successors, in that behalf shall seem meet: And we do lastly by these presents, for us, our heirs and successors, direct and appoint that our Governor of our said colony of Sierra Leone, and his successors the Governors thereof, during our royal will and pleasure, may and shall have and exercise the several powers and authorities given and granted to them by these presents, together with and superadded to the several powers and authorities conferred on the Governor of the said colony by the letters patent of his late Majesty King George the Third, our dearest father, hereinbefore recited; and that the constitution and laws of our said colony of Sierra Leone, and all judicial and municipal authorities therein, shall for the present and during our royal will and pleasure, continue such as they were constituted and appointed to be by the said letters patent of his said late Majesty, or under the authority thereof, so far as the possessions heretofore held by the African Company, and also the territories belonging to us, our heirs and successors, on the west coast of Africa, between the twentieth degree of north latitude and the twentieth degree of south latitude, being annexed by these presents to our said colony of Sierra Leone, and other changes of circumstances within our said colony, whether consequent upon the same or howsoever accruing, will permit, and save also and except as the same are altered by these presents. In witness, &c., witness, &c., the 17th day of October.

By Writ of Privy Seal.

Examined with the record in the Petty Bag Office in the Court of Chancery, the 22d day of April, 1834.

J. BENTALL.

## COLONIES IN THE INDIAN SEAS.

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### CEYLON.

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CEYLON is an island in the East Indies, lying between the sixth and tenth degrees of north latitude, and the seventy-ninth and eighty-second degrees of east longitude. It is situated at the entrance of the Bay of Bengal, by which it is bounded on the north. On the north-west it is separated from the Coramandel coast by the Gulf of Manaar, a narrow strait full of shoals and impassable by large ships. It is distant about sixty miles from Cape Comorin, the southern part of the peninsula of India. Its breadth is unequal at different places, but its whole circumference is computed to be about 900 miles. The small island of Jaffnapatam is situated at its northern extremity, and forms part of the district of that name. Trincomalee lies on the north-eastern part of the island; Batticaloa on its eastern coast; and Colomba on its south-western. Kandy, the capital, is nearly in the centre of the island, which in shape somewhat resembles an egg pear. The general aspect of the country is hilly, the richness of its produce is very considerable, and various travellers have spoken of its beauty in terms of almost extravagant admiration. The northern part of the island is said frequently to suffer in its agriculture for want of rain, and to be sickly in consequence of a deficient supply of water. The climate on the whole is much more temperate than on the continent of India, at least where the sea breezes have room to circulate. The principal harbours are Trincomalee, Point de Galle, and the Roads of Colombo.

The cinnamon tree is indigenous to the island, and it is said that there are annually gathered two crops of oranges, and that almost all the West India fruits, together with

some that are peculiar to Ceylon, grow in abundance and come to great perfection.

#### HISTORY AND CONSTITUTION.

The first knowledge of the existence of this island appears, according to Arrian, to have been brought into Europe by Nearchus and Onesicritus, who were commanders of the fleet that Alexander despatched from the Indus to the Persian Gulf. Still however little was known of the state of the island till the reign of the Emperor Claudius, when the collector of the Roman customs in the Red Sea having been driven by a storm upon it, he gave such an account of Rome to the Ceylonese monarch that the latter despatched four ambassadors thither. In the latter part of the thirteenth century Ceylon was visited by Marco Polo, who, on his return, published an account of it, which was deemed, in many parts, to be fictitious, till a further acquaintance with the island proved the general accuracy of the statements made by the Venetian traveller. About half a century afterwards, Ceylon was visited by Sir John Mandeville, whose account of the place was however not published till 1588. In the year 1505 the island was first visited by the Portuguese under Lorenzo D'Almeida, the son of the Viceroy of Goa, who had been sent by his father to intercept some Moorish vessels in passing the Maldives. Even upon their first visit the Portuguese appear to have had address enough to procure a treaty of alliance, by which the Portuguese guaranteed to defend the Emperor against all his enemies, while he undertook to pay his new allies an annual tribute of 250,000 pounds of cinnamon. Don Lorenzo erected on the shore of the Bay of Galle a marble pillar, on which were engraven the arms of Portugal. In 1518 Alverenga, another Portuguese commander, sailed to Ceylon with a fleet of nineteen ships, and proceeded to erect a fort. For doing this he had the authority of his own sovereign, and he pretended to have the permission of the Emperor of Ceylon. The permission however was denied; the Singalese attempted to impede the progress of the work, and some of them were killed in the affray. Alvarenga attacked them and compelled them to submit to a treaty in which, among other conditions, it was stipulated that the Portuguese should be at liberty to erect a

fort at Colombo, that the Emperor should pay to King Emanuel an annual tribute of a certain number of precious stones, six elephants, and 120,000 pounds of cinnamon. The Dutch, who had some time before begun to visit Ceylon, were, in 1636, formally called in to assist in deciding the disputes between two rival candidates to the throne of Kandy. From that time they began to possess themselves of forts in the country, cultivated the friendship of the Emperor, and in 1658 succeeded in totally driving the Portuguese out of Ceylon. In 1672 the French, under M. de la Haye, made an attempt to establish commercial relations with the Emperor of Ceylon. De la Haye sent ambassadors to the Emperor, who, probably with the view of having at hand a power that was a rival to the Dutch, granted them leave to build a fort in the Bay of Trincomalee, assisted them in the work, and allowed some of his own subjects to form part of the garrison. De la Haye then sailed for the Coramandel coast, but promised speedily to return, which however he was prevented from doing as his fleet was dispersed by the Dutch, who took four of his ships, and drove the rest into Surat. The Dutch admiral then sailed to the Bay of Trincomalee and made himself master of the fort. In 1782 a British fleet under the command of Sir Edward Hughes, and some land forces under that of Sir Hector Munro, made themselves masters of Trincomalee. They were soon afterwards dispossessed by the French. The English finally took possession of the Dutch settlements in Ceylon in the year 1796. The conquest was easily achieved by a body of forces under the command of Colonel Stuart. The conquered provinces were for a short time subjected to the jurisdiction of the Presidency of Madras, but were afterwards transferred to the crown of Great Britain, and rendered wholly independent of the East India Company. The Honourable Frederick North went out in 1798 as the first Governor of the British possessions in the island of Ceylon.—Philalethe's (R. Fellowes) History of Ceylon, 1 to 174.

In 1815 the cruelties of the reigning sovereign had alienated the affections of his subjects, and compelled the chief men of the country to throw themselves on the British authorities for protection. In addition to his misconduct to his own subjects, the King had barbarously put to death ten inhabitants of the British settlements,

who had resorted to a village within the Kandian limits for their usual purposes of traffick, and who, without having committed any crime or even having any imputed to them, were seized and conveyed to prison. They were all mutilated in a most shocking manner. Seven died upon the spot, and the remaining three arrived in Colombo with their arms, noses, and ears cut off. This act of horrible cruelty was no doubt perpetrated by way of retaliation for the protection afforded by the British to the King's own subjects who had fled from his desperate and atrocious cruelties. It left however no alternative but a submission which the King was not likely to offer, or an appeal to the sword. The first was deemed utterly hopeless, and the second was resolved on. Although deprived of the expected aid of some troops from India, General Brownrigg, relying as much on the universal hatred felt for the tyrant as on his own means of attack, advanced with the force under his command, amounting to no more than 3000 men, to the overthrow of the Kandian government. His anticipations of the result were not miscalculated, and without the loss of a single man he obtained possession of the town of Kandy, and of the person and family of the tyrant. (1)

On the 2d of March, 1815, a conference was held in the audience-hall of the palace of Kandy, between the Governor on the one part, the Adikars, Dessaves, and other principal chiefs of the Kandian provinces on the other part, on behalf of the people, and in presence of the Mohottales, Coraals, Vidaans, and other subordinate Headmen from the different provinces. and a great concourse of inhabitants.—Governor's Bulletin.—Narr. 66.

The convention there agreed on declared that the Raja Sri Wikreme Raja Sinha, by the habitual violation of the chief and most sacred duties of a sovereign, had forfeited

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(1) This summary of the cause, the manner, and the result of the very short but important war which put the whole of Ceylon into the possession of England, is drawn from a pamphlet published by Egerton of Whitehall, and entitled "A Narrative of Events that have recently happened in Ceylon, by a gentleman resident on the spot." Most of the circumstances described in the Narra-

tive, especially that of the mutilation of ten British subjects, are stated in the Governor's proclamation and other official documents appended to the Narrative. This pamphlet is quoted with respect by the author of the History of Ceylon, which was originally published under the assumed name of Philaethes, but which in the copy deposited in the British Museum is attributed to Mr. R. Fellowes.

all claim to that title, and was deposed from the office of king; that the dominion of the Kandian provinces was vested in the Sovereign of the British Empire, to be exercised through the Governors and their accredited agents, saving to the Adigars and others lawfully appointed by authority of the British government, the rights, privileges, and powers of their respective offices, and to all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions, and customs established and in force amongst them.

The religion of Boodho, professed by the chiefs and inhabitants, was declared inviolable, and its rites, ministers, and places of worship were to be maintained and protected.

Every species of bodily torture, and all mutilation of limb, member, or organ, were prohibited and abolished.

No sentence of death was to be carried into execution except on the written warrant of the Governor, made on a report of the agents of the government, in whose presence all criminal trials were to take place.

Dispositions were then made for the administration of justice till His Majesty's pleasure should be known, and in the meantime the laws of England, as to criminal matters, were declared to be in force with respect to British subjects.—Narr. Appendix.

A rebellion occurred in 1816, and a change of the constitution was made in consequence.

The following regulations were introduced. (Those relating to judicial matters have since been abolished by the Charter of Justice.)—See the Charter, post, 544.

The executive and judicial authority was delegated to a board of commissioners, and occasionally to resident agents.

The Europeans were required to pay proper marks of respect to the native chiefs.

A tenth of the produce of rice grounds was claimed in lieu of all former taxes, except in certain loyal districts, where only one-fourteenth was levied.

The lands of many individuals distinguished for loyalty during the rebellion, those belonging to temples, to public officers of the state, and the Chálías or cinnamon peelers, were exempt from all taxes.

The causes of minor importance were heard by the go-



vernment agent or second commissioner alone ; more important cases by the same persons, assisted by two or more native chiefs ; and capital cases by the Resident, or second commissioner, and similar assistants.

A right of appeal from inferior to superior courts, and ultimately to the Governor, was established.—Ency. Metr.

PECULIAR OFFICES AMONG THE CEYLONESE.

The Singalese have certain established national laws or old customs, according to which most things are determined, where the will of the King does not interpose to make any alteration. The children inherit the landed property, which does not descend exclusively to the eldest son ; but where the right of primogeniture is allowed, the individual is obliged to support the mother and children. No man may marry a woman who has run away from her husband until the husband has married another woman. The children of a freeman by a mother who is a slave, are born slaves, but the children of a slave by a free woman are free. A thief who cannot make a sevenfold restitution becomes a slave. Old people who run in debt barter their children for the amount, or pawn them as a security for the payment.

In a part of Valentyn's work, entitled " Extract uyt de Consideratien van de Heer van Rhee de over Ceylon," dated in the year 1677, it is said that a *ganima*, or village, is composed of several hamlets ; a *pattu*, or district, of several villages ; a *corle*, or county, of several *pattus* ; and a *dessaveny*, or province, of several *corles*.—Hist. Ceylon, 323, n.

A *coraal* is the overseer or president of a *corle* or county, who has two, three, or four *attacoraals* under him, according to the size of the *corle* and the number of *pattus* into which it is divided. He has moreover from six to eight *lascaryns*, *pamideas*, or messengers, subject to his orders. The *attacoraals* are to see that these orders are punctually executed.

*Cariacoranno*, or the *majoraals*, may be denominated the bailiffs of a village. They vary from one or two to six or more, according to the size, culture, and population of the village. It is their business to attend to the payment of the annual imposts, to see that the land is sowed

and the harvest got in at the proper time, and to render a good account to the lord or proprietor of the soil. When the lord visits the village it is their duty to see that proper apartments are prepared for him, that they are hung with white calico, and his stool covered with the same. They are also to attend to the supply of his food during his stay.

*Lianno* is the same as clerk or scribe of the village, who keeps an account, which he gives to the lord, of all the products and dues thereof.

*Canganeme* is an officer who musters the people of the village and calls them together when any work is to be done.

*Mananna* is a measurer of grain; when the harvest has been got in it is his business to measure out that grain, which is a common stock, to the different proprietors. He was also particularly to measure the corn that was due as an impost to the King.

*Ganhewaja*, a village lascaryn, who at the orders of the Kadan of the village calls the people together, and goes from house to house to announce on what day they are to meet.

*Haindes* execute the work that is to be done in a village, and work by turns for the King or the proprietor.

*Coolies*, porters of all kinds of burdens and bearers of the palanquins. These coolies are of the cast or race of the vellalas, who sprang up in the time of the Portuguese. Before their time there were no coolies among the vellalas, but only among the inferior casts.

#### COURTS.

The courts appointed by the Charter of Justice are—  
“The Supreme Court of the island of Ceylon.” It is to consist of one Chief Justice and two Puisne Judges, to be appointed by letters-patent of the island, in pursuance of warrants from England.

The judges to hold office during pleasure.—Ss. 5, 6.

Three circuits are to be formed, the northern, southern, and eastern.—S. 21.

District Courts, consisting of one judge and three assessors, are to be established throughout the island. The district judges to hold office during pleasure.—Ss. 23, 24.

The Supreme Court to be holden at Colombo.—S. 28.

The District Courts to have jurisdiction over all civil matters within the limits of their respective districts, and over all criminal matters, except where the punishment is death, transportation, or banishment, or imprisonment for more than twelve calendar months, or whipping exceeding 100 lashes, or a fine exceeding £10.—Ss. 29, 30. They are also to have the care of persons of unsound mind, s. 31; of matters relating to wills and intestacies, s. 32; of revenue, s. 33. Their decisions are to be pronounced in open court.—S. 35.

The Supreme Court is to have an appellate jurisdiction over matters previously decided in the District Courts, and over those matters which the District Courts cannot inquire into.—S. 36.

Civil and criminal sessions are to be holden by some one of the judges of the Supreme Court, in each of the circuits into which the island is divided.—S. 37.

Prosecutions for criminal offences to be by a public officer.—Ss. 46, 47.

Civil and criminal sessions shall be held at Colombo.—S. 52.

Questions of law may be reserved at these sessions, and general sessions shall be held at Colombo to decide on them.—Ss. 53, 54.

Writs of Habeas Corpus may be issued by the Supreme Court.—S. 57.

The judges of the Supreme Court to make general rules and orders.—S. 60.

The right to present appeals is limited and regulated by s. 61, and the right of the Crown to admit appeals not coming within such limitations and regulations, is reserved.—S. 62.

All laws, &c. now in force in the island, and repugnant to the present charter, abrogated.—S. 65.

The charter to come into effect within two months after its arrival on the island.—S. 67.

### CEYLON CHARTER OF JUSTICE, 1833.

WILLIAM the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, &c. to all to whom these presents shall come, greeting :

1. Whereas his late Majesty King George the Third, by three several charters and letters-patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date respectively at Westminster the 18th day of April, in the year of our Lord 1801, the 6th day of August, in the year of our Lord 1810, and the 30th day of October, in the year of our Lord, 1811, did establish within his said late Majesty's settlements of the Island of Ceylon and the territories and dependencies thereof, a certain court called the Supreme Court of Judicature in the Island of Ceylon, and a certain other court called the High Court of Appeal in the Island of Ceylon, and did make certain other provisions for the due administration of justice in the said settlements, territories, and dependencies: And whereas since the day on which the last of the said several charters and letters-patent bears date, a certain territory in the interior of the said Island of Ceylon, called the kingdom of Kandy, or the Kandyan provinces of the Island of Ceylon, hath become and now is subject to his Majesty, whereby the whole Island of Ceylon with its dependencies has become and now is part of his Majesty's dominions: And whereas it is provided by each and every of the said several charters and letters-patent, that nothing therein respectively contained, or any act which should be done under the authority thereof respectively, should extend or be deemed or construed to extend to prevent his said late Majesty, his heirs and successors, from making such further or other provision for the administration of justice throughout the said settlements and territories in the said Island of Ceylon with their dependencies, at his and their will and pleasure, and as circumstances might require, his late Majesty meaning and intending fully and absolutely, and to all intents and purposes whatsoever, to reserve to himself his heirs and successors, such and the same rights and powers in and over the said settlements, territories, and dependencies and every part thereof, and especially touching the administration of justice therein, and all other matters and things in and by the said several charters and letters-patent provided for, as if the said several charters and letters-patent had not been made, anything therein contained, or any law, custom, usage, matter or thing whatsoever to the contrary in anywise notwithstanding: And whereas it is expedient to make more

general and more effectual provision for the administration of justice in the said island and its dependencies: Now know ye, that we upon full consideration of the premises, and of our certain knowledge and mere motion, have thought fit to revoke and annul, and do hereby revoke and annul each and every of the said charters and letters-patent, such revocation to take effect at and from after the time when (as hereinafter mentioned) this our charter will come into operation in our said island.

2. And whereas in the several districts and provinces of the said island there now are several courts appointed to administer justice by the exercise of original jurisdiction to the inhabitants of the said districts and provinces, known respectively by the names and titles of the Provincial Courts, the Courts of the Sitting Magistrates, the Court of the Judicial Commissioner, the Court of the Judicial Agent, the Courts of the Agents of Government, the Revenue Courts, and the Court of the Sitting Magistrate of the Mahabadde: And whereas such courts differ among themselves in respect of their constitution, of their rules of procedure, and of the kinds and degrees of the jurisdiction which they exercise within the limits of their respective districts or provinces: Now know ye, that we upon full consideration of the premises have thought fit to direct, ordain, and appoint, that the said Provincial Courts, the said Courts of the Sitting Magistrates, the said Court of the Judicial Commissioner, the said Court of the Judicial Agent, the said Courts of the Agents of Government, the said Revenue Courts, and the said Court of the Sitting Magistrate of the Mahabadde, shall be and the same are hereby respectively abolished, such abolition to take effect at and from after the time when (as hereinafter mentioned) this our charter will come into operation in our said island.

3. And whereas the Governor of our said island for the time being, and the said Court of the Judicial Commissioner have hitherto exercised an appellate jurisdiction for the administration of justice in certain cases arising in the Kandyan provinces of our said islands: And whereas certain courts called the Minor Courts of Appeal, and certain courts called the Minor Courts of Appeal from revenue cases, have hitherto exercised an appellate jurisdiction for the administration of justice in certain cases arising in the maritime provinces of the said island: And whereas the existence of several independent appellate judicatures in the said island tends to introduce uncertainty into the administration of justice there: Now know ye, that we upon full consideration of the premises, have thought fit to direct and ordain, and do hereby direct and ordain, that the said appellate jurisdictions of the Governor of the said island, and of the said Court of the Judicial Commissioner respectively, shall be and the same are hereby respectively abolished, and that the said Minor Courts of Appeal, and the said

Minor Courts of Appeal for revenue cases, and such their appellate jurisdiction, shall be and the same are hereby abolished.

4. And to provide for the administration of justice hereafter in our said island, our will and pleasure is, and we do hereby direct, that the entire administration of justice, civil and criminal, therein shall be vested exclusively in the courts erected and constituted by this our charter, and in such other courts as may be holden within the said island under any commission issued or to be issued in pursuance of the statutes in that case made and provided for the trial of offences committed on the seas, or within the jurisdiction of our Lord High Admiral or the commissioners for executing his office, or under any commission issued or to be issued by our Lord High Admiral or by the commissioners for executing his office for the time being. And it is our pleasure, and we do hereby declare, that it is not and shall not be competent to the Governor of our said island, by any law or ordinance to be by him made with the advice of the Legislative Council thereof or otherwise howsoever, to constitute or establish any court for the administration of justice in any case, civil or criminal, save as hereinafter is expressly saved and provided: Provided nevertheless, and we do hereby declare, that nothing herein contained shall extend or be construed to extend to prevent any persons from submitting their differences to the arbitration of certain assemblies of the inhabitants of villages known in our said island by the name of Gansabes.

5. And we do hereby grant, direct, ordain, and appoint, that there shall be within the said island of Ceylon one Supreme Court, which shall be called "The Supreme Court of the Island of Ceylon."

6. And we do direct and appoint, that the said Supreme Court of the island of Ceylon shall consist of and be holden by and before one Chief Justice and two Puisne Justices, and that the Chief Justice shall be called and known by the name and style of "The Chief Justice of the Island of Ceylon;" and that the said Chief Justice and Puisne Justices shall from time to time be nominated and appointed to such their offices by letters-patent, to be issued under the public seal of the said island, in pursuance of warrants to be from time to time issued by us, our heirs and successors, under our or their sign manual, and shall hold such their offices during the pleasure of Us, Our heirs and successors.

7. And we do further direct and appoint, that upon the death, resignation, sickness, or incapacity of the said Chief Justice, or any of the said Puisne Justices, or in case of the absence of any of them from the said island, or in case of any such suspension from office as hereinafter mentioned, of any such Chief Justice or Puisne Justice, it shall and may be lawful to and for the Governor of our said island for the time being, by letters-patents to be by him for that purpose made and

issued under the public seal of the said island, to nominate and appoint some fit and proper person or persons to act as and in the place and stead of any such Chief Justice or Puisne Justice so dying or resigning, or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from the said colony, or being so suspended until the vacancy or vacancies so created by any such death, or resignation, or sickness, or incapacity, or absence, or suspension, shall be supplied by a new appointment to be made in manner aforesaid, or until the Chief Justice or Puisne Justice so becoming sick or incapable, or being absent or suspended as aforesaid, shall resume such his office, and enter into the discharge of the duties thereof.

8. And whereas cases may arise in which it may seem necessary to our Governor for the time being of our said island, that a judge of the said court should be suspended from the exercise of his functions therein provisionally until our pleasure can be known, and it is expedient that no such act of suspension should take place except upon the most evident necessity and after the most mature deliberation; and that in any such event the judge who may be so suspended should receive the most early, complete, and authentic information of the grounds of such proceeding against him; We do therefore declare, direct, and appoint, that it shall and may be lawful for the Governor of our said island for the time being, by any order or orders to be by him for that purpose made and issued under the public seal of the said island, with the advice and consent of the Executive Council of the said island, or the major part of them, upon proof of the misconduct or incapacity of any such Chief Justice or Puisne Justice as aforesaid, but not otherwise, to suspend him from such his office and from the discharge of the duties thereof; provided that in every such case the said Governor shall immediately report for our information, through one of our principal Secretaries of State, the grounds and causes of such suspension; and provided also, that a full statement be entered on the minutes of the said Executive Council of the grounds of such proceeding, and of the evidence upon which the same may be founded, a full copy of which minutes and evidence shall by such Governor be transmitted to such judge, together with the order suspending him from such his office.

9. And we do hereby reserve to Us, Our heirs and successors, with the advice of Our or their Privy Council, full power and authority to confirm or to disallow any such suspension from office as aforesaid of any such Chief Justice or Puisne Justice.

10. And We do hereby give and grant to Our said Chief Justice for the time being rank and precedence above and before all our subjects whomsoever within the said island and its dependencies, excepting the Governor or Lieutenant-Governor for the time being thereof, and ex-

cepting such persons as by law or usage in England take place before our Chief Justice of our Court of King's Bench.

11. And we do hereby give and grant to the said Puisne Justices for the time being rank and precedence above and before all our subjects whomsoever within the said island and its dependencies, excepting the Governor or Lieutenant-Governor for the time being thereof, the said Chief Justice, and the officer for the time being commanding our forces in the said island and its dependencies, and excepting such persons as by law or usage in England take place before our Puisne Justices of our Court of King's Bench.

12. And we do hereby declare, that the said Puisne Justices shall take rank and precedence between themselves according to the priority of their appointments respectively.

13. And we do further grant, direct, ordain, and appoint, that the said Supreme Court of the island of Ceylon shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms, with an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of the Island of Ceylon;" and that the said seal shall be delivered to and shall be kept in the custody of the said Chief Justice, with full liberty to deliver the same to any Puisne Justice of the said court for any temporary purpose; and in case of the vacancy of or suspension from the office of Chief Justice, the same shall be delivered over to and kept in the custody of such person as shall be appointed by the said Governor of the said island to act as and in the place and stead of the said Chief Justice.

14. And we do further direct and appoint, that no such Chief Justice or Puisne Justice as aforesaid shall be capable of accepting, taking, or performing any other office, place of profit or emolument within the said island, on pain that the acceptance of such other office as aforesaid shall be *ipso facto* an avoidance of such his office of Chief Justice or Puisne Justice, as the case may be, and the salary thereof shall cease accordingly from the time of such acceptance of any other office or place: Provided nevertheless, that no such Chief Justice or Puisne Justice shall be rendered incapable of holding his office, or shall forfeit his salary by accepting the office of Judge of the Court of Vice-Admiralty in the said island, or of commissioner for the trial and adjudication of prize causes and other maritime questions arising in India.

15. And we do hereby constitute and appoint our trusty and well-beloved Sir Charles Marshall, Knight, to be the first Chief Justice of the said Supreme Court, and our trusty and well-beloved William Rough, Esquire, Serjeant-at-law, to be the senior Puisne Justice of the said Supreme Court, and our trusty and well-beloved William Norris, Esquire, to be the second Puisne Justice of the said Supreme Court.

16. And we do hereby direct, ordain, appoint and declare, that there



shall be attached and belong to the said court an officer to be styled the Registrar and Keeper of Records of the said court, and such and so many other officers as to our Chief Justice of the said court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the said court by these our letters-patent: Provided nevertheless, that no office shall be created in the said court, unless the Governor of the said island for the time being shall first signify his approbation thereof to the said Chief Justice for the time being in writing under the hand of such Governor.

17. And we do further direct and declare our will to be, that all the subordinate officers of the said court shall be appointed to such their offices by us, or by the Governor of the said island on our behalf, by commissions to be for that purpose issued under the public seal of the said island: Provided nevertheless, that all persons who shall be attached to or hold any office in the said court, as clerk or private secretary to any of the judges thereof, shall be appointed to such office by the judge for the time being whom such person may so serve in any such capacity.

18. And we do further direct and appoint, that the several officers of the said Supreme Court shall hold their respective offices during the pleasure of us, our heirs and successors, and shall be subject to be suspended from their offices therein by the said court for misconduct or other sufficient cause.

19. And we do hereby authorize and empower the said Supreme Court to admit and enrol as advocates or proctors in the said Supreme Court all such persons, being of good repute, as shall upon examination by one or more of the said Justices of the said Supreme Court appear to be of competent knowledge and ability: Provided always, that whenever the said Supreme Court shall refuse to admit and enrol any person applying to be admitted and enrolled as an advocate or proctor in the said Supreme Court, the judges of the said court shall in open court assign and declare the reasons of refusal.

20. And we do direct and declare, that no person whatsoever not so admitted and enrolled as aforesaid, shall be allowed to appear, plead, or act in the said Supreme Court, for or on behalf of any other person being a suitor in the said court.

21. And we do further declare our pleasure to be, and do hereby ordain and appoint, that for the purpose of the administration of justice under this our charter, the said island of Ceylon shall be divided into the district of Colombo, and three circuits to be called respectively the Northern Circuit, the Southern Circuit, and the Eastern Circuit, and that the said Northern Circuit shall comprise the district of Jaffna, together with the several districts which are parcel of the maritime provinces of the said island, and which lie to the westward of the Kandyan pro-

vinces of the said island, between the said district of Jaffna and the district of Colombo; and that the said Southern Circuit shall comprise the district of the Mahagampattoo, and all the districts parcel of the maritime provinces of the said island lying to the westward and southward of the Kandyan provinces of the said island, between the district of the Mahagampattoo and the district of Colombo; and that the said Eastern Circuit shall comprise all the Kandyan provinces of the said island, and all the districts parcel of the maritime provinces of the said island lying to the eastward of the Kandyan provinces of the said island, between the district of Jaffna and the district of the Mahagampattoo: Provided nevertheless, that it shall be lawful for the Governor for the time being of our said island, on any application to him for that purpose made in writing, under the hands of the judges for the time being of the said Supreme Court or the major part of them, but not otherwise, by any proclamation or proclamations to be from time to time for that purpose issued, to alter as occasion may require the before mentioned division of the said island as aforesaid, and to establish any other division or divisions thereof for that purpose which may appear to the said Governor and the whole or the major part of such judges, more conducive to the public convenience and the effective administration of justice in the said island.

22. And we do hereby authorize and require the Governor for the time being of our said island, with the concurrence of the judges of the said Supreme Court, or the major part of them, but not otherwise, by any proclamation or proclamations to be by him for that purpose from time to time issued, to subdivide into districts each of the circuits into which the said island, exclusive of the district of Comlombo, is or shall be in any manner aforesaid divided; and from time to time with the like concurrence, but not otherwise, to revoke, alter, and amend any such proclamation or proclamations, as occasion may require, and which appointment of the said circuits and districts shall be made in such a manner as may best consist with and promote the prompt and effectual administration of justice therein as hereinafter mentioned: Provided always, that until the said circuits shall in manner aforesaid be divided into districts in pursuance of this our charter, the existing divisions of our said island comprised within the respective limits of the said circuits respectively, shall for the purposes hereof be deemed and taken to be such districts as aforesaid.

23. And we do further grant, direct, and appoint, that within each and every district of the said island there shall be one court, to be called the District Court of such district; and that every such District Court shall be holden by and before one judge, to be called the District Judge, and three assessors, and that every such District Judge shall be appointed to such his office by letters-patent, to be for that purpose issued under the public seal of the said island, by the Gover-

nor thereof for the time being, in pursuance of warrants to be for that purpose addressed to him by us, our heirs and successors; provided that such Governor may and he is hereby authorized and required to issue such letters-patent as aforesaid provisionally and subject to the future signification of the pleasure of us, our heirs and successors, and without any such warrant or warrants as aforesaid, on any occasion or occasions on which it may be necessary to make any such appointment or appointments, before the pleasure of us, our heirs and successors can be known.

24. And we do hereby declare, that the said district judges respectively shall hold such their offices during the pleasure of us, our heirs and successors.

25. And we do further direct and appoint, that the before mentioned assessors shall be selected from amongst our subjects inhabiting the said island, whether natives thereof or otherwise, and being respectable men of the full age of twenty-one years and upwards, and possessing such qualifications as shall from time to time be determined by any rules or orders of court to be made in the manner hereafter mentioned, and not having been convicted of any infamous crime, nor labouring under any such bodily or mental incapacity as would render them unfit for the discharge of that office.

26. And we do hereby reserve to ourselves, our heirs and successors, the right of appointing in each of the said District Courts one person to act as a permanent assessor, but in respect of all assessors until any such appointment shall be made, and after any such appointment shall be made in respect of all assessors not so appointed, it is our pleasure, and we do hereby direct and declare, that they shall be selected, summoned, and required to serve in the said office, in such manner as shall be provided by such rules and orders of court as are hereinbefore particularly mentioned.

27. And we do hereby further direct, that the ministerial and other subordinate officers of the said District Courts respectively shall respectively be appointed to and shall hold such their offices therein in such and the like manner in every respect as is hereinbefore provided with regard to the ministerial and other officers of the said Supreme Court; and that the admission and enrolment of persons to appear to plead or act in any of the said District Courts as advocates or proctors, shall be regulated and provided for by such general rules and orders of court as are hereinafter mentioned.

28. And we do further direct and appoint, that the said Supreme Court shall be holden at Colombo in the said island, excepting for the purpose of such circuits as are hereinafter mentioned, and that every such District Court as aforesaid shall be holden at such convenient place within every such district as the Governor for the time of our said island shall from time to time for that purpose appoint by any

proclamation or proclamations to be by him in manner aforesaid issued for such division as aforesaid of the said island into districts.

29. And we do further grant, direct, and appoint, that each of the said District Courts shall be a Court of Civil Jurisdiction, and shall have cognizance of and full power to hear and determine all pleas, suits, and actions in which the party or parties defendant shall be resident within the district in which any such suit or action shall be brought, or in which the act, matter, or thing in respect of which any suit or action shall be brought, shall have been done or performed within such district: Provided nevertheless, that no such District Court as aforesaid shall be competent to hold jurisdiction of, or to hear, or to determine any cause, suit, or action, wherein the judge of such court shall himself be a party, plaintiff, or defendant; but that every cause, suit, or action, which according to the provisions aforesaid would have been cognizable in any District Court, if the judge of such court had not been a party thereto, shall in that case be cognizable in the court of any district immediately adjoining.

30. And we do further grant, direct, and appoint, that each of the said District Courts shall be a Court of Criminal Jurisdiction, and shall have full power and authority to inquire of all crimes and offences committed wholly or in part within the district to which such court may belong, and to hear, try, and determine all prosecutions which shall be commenced against any person or persons for or in respect of any such crimes or offences, or alleged crimes or offences: Provided always, that such criminal jurisdiction as aforesaid shall not extend to any case in which the person or persons accused shall be charged with any crime, which, according to any law now or hereafter to be in force within the said island, shall be punishable with death, or transportation, or banishment, or imprisonment for more than twelve calendar months, or by whipping exceeding 100 lashes, or by fine exceeding £10.

31. And we do further grant, direct, and appoint, that each of the said District Courts shall have the care and custody of the persons and estates of all idiots, lunatics, and others of insane or nonsane mind resident within such districts respectively, with full power to appoint guardians and curators of all such persons and their estates, and to take order for the maintenance of such persons, and the proper management of their estates, and to take proper securities for such management from such guardians and curators, and to call them to account, and to charge them with any balance which may be due to any such persons aforesaid, or to their estates, and to enforce the payment thereof, and to take order for the secure investment of any such balances, and such guardians and curators from time to time to remove and replace as occasion may require.

32. And we do further give and grant to the said District Courts respectively, in their said respective districts, full power and authority to appoint administrators of the estates and effects of any persons dying within such respective districts intestate, or who may not have by any last will and testament appointed any executor or trustee for the administration or execution thereof, and like power and authority to inquire into and determine upon the validity of any document or documents adduced before them as and for the last will and testament of any person who may have died within such districts respectively, and to record the same, and to grant probate thereof, with like power and authority to appoint administrators for the administration or execution of the trusts of any such last will and testament as aforesaid, in cases where the executors or trustees thereby appointed shall not appear and take out probate thereof, or having appeared and taken out such probate, shall by death or otherwise become incapable to carry any such trusts fully into execution. And we do further authorize and empower the said District Courts in their said respective districts to take proper securities from all executors and administrators of the last wills and testaments of any deceased persons, or of the estates and effects of any persons who may have died intestate, for the faithful performance of such trusts, and for the proper accounting to such courts respectively for what may come to their hands, or be by them expended in the execution thereof, with like power and authority to call all such executors and administrators to account, and to charge them with any balances which may be due to the estates of any such deceased persons, and to enforce the payment thereof, and to take order for the secure investment of any such balances, and such executors and administrators from time to time to remove and replace as occasion may require.

33. And whereas doubts might arise whether by virtue of the provisions aforesaid, and without an express authority in that behalf, the said District Courts would be competent to entertain suits therein brought for the protection of our revenue, and for the punishment of offences committed against the revenue laws of our said island: Now, therefore, for the removal of such doubts, we do hereby expressly declare, that all causes affecting our revenue arising within our said island, and all prosecutions for the punishment of offences therein committed against the revenue laws thereof, shall be cognizable within the said District Courts respectively in such and the same manner as any other suits and prosecutions; saving nevertheless and reserving to all Courts of Vice-Admiralty established or to be established within our said island, all such rights, powers, jurisdictions, and authority as are by law vested in them, as fully as if this our charter had not been made: Provided nevertheless, that no such prosecution for any offence committed against the revenue laws shall be cognizable within any such

District Court, in cases where the punishment may be of greater degree or amount than such District Court can, under the provisions aforesaid, award upon prosecutions for any other offence.

34. And we do further grant and declare, that the several jurisdictions so vested as aforesaid in the said District Courts, is and shall be an exclusive jurisdiction, and shall not on any plea or pretext whatsoever be assumed or exercised by any other court, tribunal, or judge within our said island, save and except in so far as cognizance of the same suits, causes, actions, prosecutions, matters and things, is hereinafter expressly given by way of appeal to the Supreme Court aforesaid, or to the respective judges thereof, and also save and except in so far as an original jurisdiction in certain suits, causes, actions, prosecutions, matters and things, is hereinafter vested in the said Supreme Court, or in the respective judges thereof, and also save and except in as far as respects the jurisdiction of the Court of Vice-Admiralty in the said island.

35. And we do further direct and appoint, that every final sentence or judgment of the said District Courts respectively, and that every interlocutory order of the said courts having the effect of a final sentence or judgment, and that every order of any such court having the effect of postponing the final decision of any cause or prosecution there pending, and any other order which to the judge of any such court may appear of adequate importance, shall by such judge be pronounced in open court, and that such judge shall in all such cases state, in the presence and hearing of the assessors before mentioned, what are the questions of law and of fact which have arisen for adjudication, and which are to be decided upon any such occasion, together with his opinion upon every such question, with the grounds and reasons of every such opinion, and that every assessor shall also in open court, and in the presence and hearing of the judge and the other assessors, declare his opinion and deliver his vote upon each and every question which the judge shall have previously declared to have arisen for adjudication, whether such questions shall relate to any matter of law or to any matter of fact: Provided nevertheless, that in case of any difference of opinion between any such judge and the majority or the whole of such assessors upon any question of law or of fact depending before any such District Court, the opinion of such judge shall prevail, and shall be taken as the sentence, judgment or order of the whole court; but in every such case a record shall be made and preserved among the records of the said court of the questions declared by the judge to have arisen for adjudication, and of the vote of such judge and of every such assessor upon each such question.

36. And we do hereby grant, declare, direct, and appoint, that the Supreme Court of the island of Ceylon shall be a Court of Appellate juris-

diction for the correction of all errors in fact or in law which shall be committed by the said respective District Courts, and shall have sole and exclusive cognizance by way of appeal of all causes, suits, actions, prosecutions, matters and things, of which such District Courts may, in pursuance of the provisions of this our charter, or any of them, take cognizance by way of original jurisdiction. And we do further grant to the said Supreme Court power, jurisdiction and authority to hold an original jurisdiction for inquiring of all crimes and offences committed throughout the said island, and for the hearing, trying and determining all prosecutions which shall be commenced against any person or persons for or in respect of any such crimes or offences, or alleged crimes or offences.

37. And to provide for the due execution of the powers and authorities and jurisdictions so vested as aforesaid in the said Supreme Court, it is our further pleasure, and we do direct, ordain and appoint, that civil and criminal sessions of the said Supreme Court shall be holden by some one of the judges thereof in each of the circuits into which our said island is or shall be so divided as aforesaid.

38. And we do further direct and appoint, that such sessions as aforesaid of the said Supreme Court shall be holden twice in each year within the northern, southern and eastern circuits of the said island respectively hereinbefore described or referred to, at such places within such respective circuits, and at such particular times in each year as the Governor for the time being of our said island shall, after previous consultation with the judges of the said Supreme Court, by proclamations to be by him from time to time for that purpose issued, direct and appoint: Provided always, that the times and places for holding such civil and criminal sessions of the said Supreme Court on such circuits shall be so arranged as that all the judges of the said Supreme Court shall never at the same time be absent from Colombo, and that all such judges shall be resident at the same time at Colombo not less than one month twice in each year. And we do direct and appoint, that the Chief Justice of the said court shall first choose the circuit on which he will proceed for the purposes aforesaid, and that the second choice shall be made by the senior Puisne Judge for the time being.

39. And we do further direct, ordain and appoint, that at every civil sessions of the Supreme Court to be holden on any such circuit as aforesaid, three assessors shall be associated with the judge, and that every criminal sessions of the Supreme Court to be holden on any such circuit, shall be holden before such judge and a jury of thirteen men, which assessors and jurors shall be selected, summoned and required to appear and serve in such manner and form as shall be provided by such general rules and orders of court as hereinafter mentioned.

40. And we do will, ordain and appoint, that within each and every

of the said circuits respectively all and every the appellate powers, jurisdictions and authorities hereby vested in the said Supreme Court shall be exercised by the judge for the time being of such circuit, and the assessors so to be associated with him as aforesaid; and that within each and every of the said circuits respectively, all and every the original powers, jurisdictions and authorities hereby vested in the said Supreme Court shall be exercised by the judge for the time being of such circuit, who, upon the trial of any crimes made cognizable by the said Supreme Court by way of such original jurisdiction as aforesaid, shall be associated with such jurors as aforesaid.

41. And we do further direct and appoint, that at every civil sessions of the said Supreme Court so to be holden as aforesaid on every such circuit, the said court shall proceed to hear and determine all appeals which may be then pending from any sentence, judgment, decree or order of any District Court within the limits of such circuit, and to affirm, reverse, correct, alter and vary every such sentence, judgment, decree or order, according to law, and, if necessary, to remand to the District Court for a further hearing, or for the admission of any further evidence, any cause, suit or action in which any such appeal as aforesaid shall have been brought; and upon hearing every such appeal it shall also be competent to the said Supreme Court to receive and admit, or to exclude and reject, new evidence touching the matters at issue in any such original cause, suit, or action, as justice may require.

42. And we do further direct and appoint, that the Supreme Court aforesaid at every civil sessions to be holden on any such circuit as aforesaid, shall have full power and authority to grant and issue mandates, in the nature of writs of *mandamus*, *procedendo*, and prohibition, against any District Court within the limits of such circuit, and to make order for the transfer of any cause, suit or action depending in any one District Court in any such circuit to any other District Court within the same circuit, if it shall be made to appear to the satisfaction of the said Supreme Court at any such civil sessions as aforesaid, that there is any sufficient cause or reason to conclude that in such particular cause, suit or action, justice would not probably be done in the District Court in which the same had so been commenced; and in every such case the District Court to which any such cause, suit or action shall be so transferred, shall take cognizance thereof, and have power and jurisdiction for the hearing, trial and decision of the same, as fully and effectually to all intents and purposes as the District Court in which the same was originally brought could or might have had.

43. And we do further direct, declare and appoint, that the judge of the Supreme Court holding any such civil sessions thereof as aforesaid on any such circuit, shall in open court state and declare, in the presence and hearing of the assessors before mentioned, what are the



questions of law and of fact arising for adjudication upon every appeal brought before the said Supreme Court at such sessions, and which are then to be decided, and shall then pronounce his opinion upon every such question, with the grounds and reasons of every such opinion; and that every such assessor shall thereupon also in open court, and in the presence and hearing of such judge and the other assessors, declare his opinion and deliver his vote upon each and every question which the judge shall have previously declared to have arisen for adjudication, whether such question shall relate to any matter of law or to any matter of fact; and in case of any difference of opinion between any such judge and the majority or the whole of such assessors, upon any question of law or of fact depending upon such appeal, the opinion of such judge shall prevail, and shall be taken as the sentence, judgment or order of the whole court; but in every such case a record shall be made and preserved among the records of the said Supreme Court of the questions declared by the judge to have arisen for adjudication, and of the vote of such judge and of every such assessor upon every such question.

44. And we do further direct, ordain and appoint, that at every criminal sessions of the said Supreme Court to be holden on any such circuit as aforesaid, such court shall proceed to hear and determine all appeals which may be then depending from any sentence or judgment pronounced by any District Court within the limits of any such circuit in any criminal prosecution, and to affirm, reverse, correct, alter and vary every such sentence and judgment according to law: and upon hearing every such appeal it shall also be competent to the said Supreme Court to receive and admit, or to exclude and reject, new evidence touching the matters at issue in any such original prosecution as justice may require; and it shall also be lawful for the said Supreme Court at any such criminal sessions as aforesaid, to make order for the transfer of any prosecution depending in any one District Court in such circuit to any other District Court within the same circuit, if it shall be made to appear to the satisfaction of the said Supreme Court at any such criminal sessions as aforesaid, that there is any sufficient cause or reason to conclude that in such particular prosecution justice would not probably be done in the District Court in which the same had been so commenced; and in every such case the District Court to which any such prosecution shall be so transferred shall take cognizance thereof, and shall have power and jurisdiction for the hearing, trial and decision of the same, as fully and effectually to all intents and purposes as the District Court in which the same was originally brought could or might have had.

45. And we do further declare and ordain, that notwithstanding the right of appeal hereby given from the judgments and sentences of the

said District Courts upon such criminal prosecutions as aforesaid, no such appeal shall have the effect of staying the execution of any sentence or judgment pronounced by any such District Court upon any prosecution, unless the judge of such District Court shall in the exercise of his discretion see fit to make order for the stay of any such execution pending such appeal.

46. And we do further direct, ordain and appoint, that at every criminal sessions of the said Supreme Court so to be holden as aforesaid on every such circuit, the said Supreme Court shall inquire of all crimes and offences committed within the limits of any such circuit, for the trial of which such original jurisdiction as aforesaid is by this our charter vested in the said Supreme Court, and which the King's Advocate or Deputy King's Advocate shall elect to prosecute before such Supreme Court, and shall hear, try and determine all prosecutions which shall be commenced by the said King's Advocate or Deputy King's Advocate against any person or persons for or in respect of any such crimes or offences, or alleged crimes or offences.

47. And we do further direct and ordain, that all crimes and offences cognizable before any of the courts constituted by these presents, or deriving authority from the same, shall be prosecuted; and that all fines, penalties and forfeitures recoverable therein to our use, shall be sued for and recovered in the name of our Advocate Fiscal of our said island, and by him or by some Deputy Advocate Fiscal,<sup>(1)</sup> by an information to be exhibited without the previous finding of any inquest by any grand jury or otherwise: Provided nevertheless, that it shall be competent to the said Supreme Court, by such rules and orders of court as after mentioned, to make any other and more convenient provision for the prosecuting before the said District Courts breaches of the peace, petty assaults and other minor offences of the like nature.

48. And we do further direct and ordain, that all questions of fact upon which issue shall be joined at any such criminal sessions as aforesaid of the said Supreme Court, on any such circuit as aforesaid, shall be decided by such jury of thirteen men as aforesaid, and that the verdict of such jury shall be pronounced in open court by the mouth of the foreman; and that if such jury shall not agree upon their verdict, then the verdict of the major part of such jury shall be received and taken as the verdict of the jury collectively.

(1) Though the terms "Advocate Fiscal" and "Deputy Advocate Fiscal" are used here, Lord Goderich in his Despatch, dated 23d March, 1833, accompanying the charter, and addressed to Sir R. J. Wilmot Horton, the Governor, declares the objections

that exist to these titles, and observes, that "the titles of those officers are altered by the charter" to the King's Advocate and Deputy King's Advocate. The use of the former titles in this place seems therefore to be an accidental error.

49. And we do further direct and ordain, that all questions of law which shall arise for adjudication at any such criminal sessions as aforesaid of the said Supreme Court in any such circuit as aforesaid, shall be decided by the judge presiding at such sessions, who shall pronounce his judgment thereupon in open court, and assign the grounds and reasons of such judgment; saving nevertheless to every such judge the right of reserving such questions for the decision of the judges of the said Supreme Court collectively at their general sessions, in manner hereinafter mentioned.

50. And we do further appoint, declare and direct, that in every case where any person shall be adjudged to die by any sentence of the Supreme Court of our said island at any such criminal sessions as aforesaid, the execution of such sentence shall be respited until the case of such person shall have been reported by the Chief Judge or Puisne Justice who shall have presided at such trial to the Governor of the said island for the time being, which report shall be made as soon after the passing of such sentence as conveniently may be.

51. And we do further appoint, declare, and direct, that the judge on any such circuit as aforesaid, holding the said criminal sessions of the said Supreme Court, shall and may issue his mandate under his hand, and directed to all and every the fiscals or other keepers of prisons within the limits of his circuit, to certify to the said judge the several persons then in their or any of their custody, committed for and charged with any crimes or offences whatsoever; and the said fiscals or other keepers of prisons shall and are hereby required to make, certify, and transmit due returns to such mandate, by specifying in a calendar or list, to be annexed to such mandate respectively, the time and times when all and every of the said persons so in their custody was or were committed, and by whose authority particularly, and on what charge or charges, crime or crimes respectively, in writing; and to the said list or calendar shall also be annexed such information or informations, upon oath, as may have been taken against them or any of them, and be then remaining in the hands of the said fiscals or keepers of prisons, or true copies thereof attested by the said fiscals or keepers of prisons respectively; and if need be, according to the tenor and exigence of such mandate, such fiscal or keepers of prisons shall bring the said persons so in their custody, or any of them, before the said judge, wheresoever the said judge shall then be holding the criminal sessions of the said Supreme Court, together with such witness or witnesses whose name or names shall appear to be written or indorsed on the respective commitments, by virtue of which such prisoners or prisoner were or was delivered into their custody respectively, in order that such prisoners or prisoner may be dealt with according to law: Provided always, that wherever any party or parties shall, after the making out of any such

calendar or list, and while such judge shall be holding the criminal sessions of the said Supreme Court in the town or place wherein such calendar or list was delivered, be apprehended or committed on any criminal charge, it shall and may be lawful for the officer of such Supreme Court to insert the name or names of such person or persons in such calendar or list.

52. And we do further direct, declare, and appoint, that any judge of the Supreme Court remaining at Colombo, shall within the limits of the district of Colombo exercise the same jurisdiction, and hold such and the same civil and criminal sessions, as the said judges of the Supreme Court are by these presents directed, appointed, and ordained to exercise and to hold on their respective circuits within the limits of their respective circuits.

53. And we do further ordain and appoint, that whenever any question of law, pleading, evidence, or practice, shall arise for adjudication at any civil or criminal sessions of the said Supreme Court, at any such circuit as aforesaid, or within the said district of Colombo, which shall appear to the judge presiding at such sessions to be a question of doubt and difficulty, it shall be lawful for such judge to reserve such question of law, pleading, evidence, or practice, for the decision of the judges of the said Supreme Court collectively, and to report any question so reserved to the said judges at some general sessions of the said Supreme Court to be held for that purpose as hereinafter mentioned.

54. And we do further direct and appoint, that the judges of the said Supreme Court shall from time to time, as occasion may require, collectively hold a general sessions at Colombo to hear and inquire of any question of law, pleading, evidence, or practice so reserved as aforesaid, and to decide the same according to law.

55. And we further authorize and require the respective judges of the said Supreme Court on such circuits as aforesaid, and at the sessions so to be holden for the district of Colombo, to inspect and examine the records of the different District Courts; and if it shall appear that contradictory or inconsistent decisions have been given by different District Courts, or by the same District Court upon different occasions, upon any matters of law, evidence, pleading, or practice, then and in every such case the said judges of the Supreme Court shall report to the judges of the Supreme Court at Colombo, at such general sessions as aforesaid, any such contradictions or inconsistencies; and the said judges of the Supreme Court shall, after due consideration of the matters so brought before them, prepare the draft of such a declaratory law upon any matter of law or evidence in respect of which such contradictory or inconsistent decisions shall have been given, as the occasion shall appear to them to require, and shall transmit such draft under the seal of the said court to the Governor for the time being of our said

island, who shall thereupon lay the draft of such declaratory law before the Legislative Council of the said island for their consideration.

56. And we further direct and ordain, that the said Judges of the Supreme Court shall, in pursuance of the powers hereinafter vested in them, after due consideration of any reports so to be made as aforesaid by any such Judge, of any such contradiction or inconsistency as aforesaid, in any matter of pleading or practice, make or establish such general rules and orders of court for the removal of any doubts respecting any such matters, as the occasion shall appear to them to require.

57. And we do further ordain and appoint, that the said Supreme Court, or any Judge thereof, at any sessions so to be holden as aforesaid on any such circuit as aforesaid, or in the district of Colombo, or at any general sessions of the Judges of the said Court collectively, shall be and are hereby authorized to grant and issue mandates in the nature of writs of habeas corpus, and to grant or refuse such mandates, to bring up the body of any person who shall be imprisoned within any part of the said island or its dependencies, and to discharge or remand any person so brought up, or otherwise deal with such person according to law.

58. And we do further direct and appoint, that the said Supreme Court, or any judge thereof, at any sessions so to be holden on any such circuit as aforesaid, or in the district of Colombo, or at any general sessions of the said court collectively, shall be and they and he are and is hereby authorized to grant and issue injunctions to prevent any irreparable mischief which might ensue before the party making application for such injunction could prevent the same, by bringing an action in any District Court: Provided always, that it shall not be lawful for the said Supreme Court, nor for any Judge thereof, in any case to grant any injunction to prevent any person from suing or prosecuting a suit in any District Court, or to prevent any party to any suit in any District Court from appealing or prosecuting an appeal to any Court of Appeal, or to prevent any party to any suit in any Court of Original Jurisdiction, or in any Court of Appeal, from insisting upon any ground of action, defence, or appeal.

59. And whereas it may be expedient that the Judges of the said Supreme Court at Colombo, previously to the commencement of any such circuits as aforesaid, should be enabled to inspect and examine the records of the said District Courts in cases upon which appeals may have been entered; and it may also be convenient that, with the consent of the litigant parties, the hearing of such appeals should take place before the judges of the said court collectively at their general sessions at Colombo, and not at such circuits as aforesaid; and it may also be convenient, that in certain cases the Judges of the said Supreme Court

collectively, at such general sessions, should be authorized to decide in a summary way, and without further argument, questions arising upon any such appeals; we do therefore further will, direct, ordain, and appoint, that it shall be lawful for the Judges of the said Supreme Court, by such general rules and orders as hereinafter mentioned, to require the said District Courts to transmit to them at Colombo the records of such District Courts in any cases upon which appeals may have been entered, and we do authorize and empower the Judges of the said Supreme Court collectively, at any such general sessions as aforesaid, with the consent of all the litigant parties, but not otherwise, (save as hereinafter provided in cases appealed to us in our Privy Council,) to hear any such appeals, or to decide the same, or any particular question or questions arising thereupon, in a summary way and without further argument, and to remit any such records, with such their final decision thereupon, to such District Courts, to be by them carried into execution.

60. And whereas, for carrying into effect the various provisions of this present charter, and for the more prompt and effectual administration of justice in our said island, it is necessary that regulations should be made respecting the course and manner of proceeding to be observed and followed in all suits, actions, and criminal prosecutions, and other proceedings whatsoever, to be brought, commenced, had, or taken within the said District Courts and the said Supreme Courts respectively, which regulations cannot be properly made except by the Judges of the said Supreme Court; we do therefore hereby further declare our pleasure to be, and do will, ordain, direct, and appoint, that it shall be lawful for the Judges of the said Supreme Court collectively, at any general sessions to be by them holden at Colombo as aforesaid, from time to time to frame, constitute, and establish such general rules and orders of court as to them shall seem meet, touching and concerning the time and place of holding any general sessions of the Judges of the said Supreme Court collectively, and any civil or criminal sessions of the said Supreme Court on any such circuits as aforesaid, or in the district of Colombo and the said several District Courts, as shall not be inconsistent with the authority hereinbefore granted to the Governor of our said island respecting the appointing of the times at which and the places to which the Judges of the said Supreme Court shall perform their circuits, together with such general rules and orders as to them shall seem meet, and touching and concerning the form and manner of proceeding to be observed in the said Supreme Court at any general sessions, and at such civil and criminal sessions as aforesaid on such circuits as aforesaid, or in the district of Colombo and in such District Courts respectively, and touching and concerning the practice and

pleadings upon all actions, suits, and other matters, both civil and criminal, to be therein brought, the proceedings of the fiscals and other ministerial officers of the said courts respectively, the process of the said courts, and the mode of executing the same, the qualifications, summoning, impannelling, and challenging of assessors, and the summoning, impannelling, and challenging of jurors, arrest on mesne process or in execution, the taking of bail, the duties of gaolers and others charged with the custody of prisoners, in so far as respects the making due returns to the respective Judges of the said Supreme Court of all prisoners in their custody, and respecting the mode of prosecuting such appeals as aforesaid from the said District Courts, the admission of advocates and proctors in the said courts respectively, together with all such general rules and orders as may be necessary for giving full and complete effect to the provisions of this present charter, in whatsoever respects the form and manner of administering justice in the several courts hereby constituted, and all such rules, orders, and regulations from time to time to revoke, alter, amend, and renew, as occasion may require: Provided always, that no such rules, orders, or regulations shall be repugnant to this our charter, and that the same shall be so framed as to promote, as far as may be, the discovery of truth and economy and expedition in the despatch of business of the said several courts respectively, and that the same be drawn up in plain, succinct, and compendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the said island, as long before the same shall operate and take effect as to such Judges may appear practicable and convenient, and provided always, that all such rules, orders, and regulations shall forthwith be transmitted to us, our heirs, and successors, under the seal of the said court, for our or their approbation or disallowance.

61. And we do further grant, ordain, direct, and appoint, that it shall be lawful for any person or persons being a party or parties to any civil suit or action depending in the said Supreme Court, to appeal to us, our heirs, and successors, in our or their Privy Council, against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following; that is to say, First, that before any such appeal shall be so brought, such judgment, decree, sentence, will, or order shall be brought by way of review before the Judges of the said Supreme Court collectively, holding a general sessions at Colombo, at which all the said Judges of the said Supreme Court shall be present and assisting, which Judges shall by such rules and orders as aforesaid regulate the form and manner of proceeding to be observed in bringing

every such judgment, decree, sentence, rule, or order by way of review before them, and shall thereupon pronounce judgment according to law, the judgment of the majority of which Judges shall be taken and recorded as the judgment of the said court collectively. Secondly, every such judgment, decree, order, or sentence from which an appeal shall be admitted to us, our heirs, and successors as aforesaid, shall be given or pronounced for or in respect of a sum or matter at issue above the amount or value of £500 sterling, or shall involve directly or indirectly the title to property or to some civil right exceeding the value of £500 sterling. Thirdly, the person or persons feeling aggrieved by such judgment, decree, order, or sentence, shall within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court at such general sessions as aforesaid, by petition, for leave to appeal therefrom to us, our heirs, and successors, in our or their Privy Council. Fourthly, if such leave to appeal shall be prayed by the party or parties who is or are adjudged to pay any sum of money or to perform any duty, the said Supreme Court shall direct that the judgment, decree, or sentence appealed from shall be carried into execution, if the party or parties respondent shall give security for the immediate performance of any judgment, decree, or sentence which may be pronounced or made by us, our heirs, and successors, in our or their Privy Council, upon any such appeal, and until such security be given the execution of the judgment, decree, order, or sentence appealed from shall be stayed. Fifthly, provided nevertheless, that if the party or parties appellant shall establish to the satisfaction of the said Supreme Court, that real and substantial justice requires that, pending such appeal, execution should be stayed, it shall be lawful for such Supreme Court to order the execution of such judgment, decree, order, or sentence to be stayed pending such appeal, if the party or parties appellant shall give security for the immediate performance of any judgment, decree, or sentence which may be pronounced or made by us, our heirs, and successors, in our or their Privy Council, upon any such appeal. Sixthly, in all cases security shall be given by the party or parties appellant for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs, and successors, to the party or parties respondent. Seventhly, the court from which any such appeal as aforesaid shall be brought, shall, subject to the conditions hereinafter mentioned, determine the nature, amount, and sufficiency of the several securities so to be taken as aforesaid. Eighthly, provided nevertheless, that in any case where the subject of litigation shall consist of immoveable property, and the judgment, decree, order, or sentence appealed from shall not change, affect, or relate to the actual occupation thereof, no security shall be



demande either from the party or parties respondent, or from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal; but if such judgment, decree, order, or sentence shall change, affect, or relate to the occupation of any such property, then such security shall not be of greater amount than may be necessary to secure the restitution, free from all damage or loss, of such property, or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation thereof. Ninthly, in any case where the subject of litigation shall consist of money or other chattels, or of any personal debt or demand, the security to be demanded, either from the party or parties respondent, or from the party or parties appellant, for the performance of the judgment or sentence to be pronounced or made upon such appeal, shall be either a bond to be entered into in the amount or value of such subject of litigation, by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immoveable property situate and being within such island, and being of the full value of such subject of litigation, over and above the amount of all mortgages and charges of whatever nature upon or affecting the same. Tenthly, the security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of costs, shall in no case exceed the sum of £300 sterling, and shall be given either by such surety or sureties, or by such mortgage or voluntary condemnation as aforesaid. Eleventhly, if the security to be given by the party or parties appellant for the prosecution of the appeal and for the payment of such costs as may be awarded, shall in manner aforesaid be completed within three months from the date of the petition for leave to appeal, then, and not otherwise, the said Supreme Court shall make an order allowing such appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs, and successors, in our or their Privy Council, in such manner and under such rules as are observed in appeals made to us in our Privy Council from our plantations or colonies. Twelfthly, provided nevertheless, that any person or persons feeling aggrieved by any order which may be made by, or by any proceedings of the said Supreme Court respecting the security to be taken upon any such appeal as aforesaid, shall be and is hereby authorized by his, her, or their petition to us in our Privy Council, to apply for redress in the premises.

62. Provided always, and we do further ordain, direct, and declare, that nothing herein contained doth or shall extend to take away or abridge the undoubted right or authority of us, our heirs, and successors, to admit and receive any appeal from any judgment, decree, sentence, or

order of the said Supreme Court, on the humble petition of any person or persons aggrieved thereby, in any case in which, and subject to any conditions or restrictions upon and under which it may seem meet to us, our heirs, and successors, so to admit and receive any such appeal.

63. And we do further direct and ordain, that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs, and successors, such court shall, on the application and at the costs of the party or parties appellant, certify and transmit to us, our heirs, and successors, in our or their Privy Council, a true and exact copy of all proceedings, evidence, judgments, decrees, and orders had or made in such causes so appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court.

64. And we do further ordain and direct, that the said Supreme Court shall, in all cases of appeal to us, our heirs, and successors, conform to, execute, and carry into immediate effect, such judgments and orders as we, our heirs, and successors, in our or their Privy Council, shall make thereupon, in such manner as any original judgment or decree of the said Supreme Court can or may be executed.

65. And we do further ordain and direct, that all laws, customs, and usages, now or at any time hereafter established or in force in the said island, so far as such laws or usages are in anywise repugnant to or at variance with this present charter, shall be and the same are hereby revoked, abrogated, rescinded, and annulled.

66. And we do further declare, that for the purpose and within the meaning of the present charter, any person lawfully administering for the time being the government of the said island, shall be deemed and taken to be the Governor thereof.

67. And we do further ordain and direct, that at the expiration of two calendar months next after the arrival within the said island of these presents, or at such earlier period as the Governor for the time being of the said island shall, by a proclamation to be for that purpose issued, appoint, this our charter shall come into operation within the said island; and from that time forward every suit, action, complaint, matter, or thing which shall be then depending before any court administering justice by original or appellate jurisdiction in the said island and its dependencies, shall and may be proceeded upon in the court in which it ought to have been instituted, or to which it ought to have been carried up in appeal, if it had been instituted or carried up in appeal after the time when the provisions herein contained shall have come into operation; and all proceedings which shall hereafter be had in such suit, action, complaint, matter, or thing respectively, shall be conducted in like manner as if such suit, action, complaint, matter, or thing had been instituted or carried up in appeal in or to such last-mentioned

court; and all the records, muniments, and proceedings whatsoever belonging or pertaining to any such suit, action, complaint, matter, or thing, shall, when the provisions herein contained shall have come into operation, be delivered over by the court in which such suit, action, complaint, matter, or thing shall be then depending to the court in or to which such suit, action, complaint, matter, or thing ought to have been instituted or carried up in appeal, if it had been instituted or carried up in appeal after the time when the provisions herein contained shall have come into operation.

68. And we do hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects within and belonging to the said island and its dependencies, that in the execution of the several powers, jurisdictions, and authorities here-by granted, made, given, or created, they be aiding and assisting and obedient in all things, as they will answer the contrary at their peril.

69. Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be deemed or construed to extend to prevent us, our heirs, and successors, by any other letters-patent to be by us or them from time to time for that purpose issued under the great seal of the United Kingdom, from revoking this our charter or any part thereof, or from making such further or other provision for the administration of justice throughout the said island and its dependencies, at our and their will and pleasure, as circumstances may require; we meaning and intending fully and absolutely, and to all intents and purposes whatsoever, to reserve to ourselves, our heirs, and successors, such and the same rights and powers in and over the said island and its dependencies, and especially touching the administration of justice therein, and all other matters and things in and by these presents provided for, as if these presents had not been made; anything in these presents contained, or any law, custom, usage, matter, or thing whatsoever to the contrary in anywise notwithstanding. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, the 18th day of February, in the third year of our reign.

By writ of Privy Seal.

(Countersigned) BATHURST.

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SUPPLEMENTARY COMMISSION.

WILLIAM the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, To our right trusty and well-beloved councillor, Sir Robert John Wilmot Horton,

right greeting : Whereas by letters-patent under the great seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the 23d day of April, 1831, in the first year of our reign, we did constitute and appoint you to be, during our will and pleasure, our Governor and Commander-in-Chief in and over our settlements in Ceylon, in the Indian Seas, and did thereby declare our pleasure to be, that there should be within our said island of Ceylon a Council of Government, to be constituted in such manner as in your general instructions therewith given to you was in that behalf directed, and did thereby give and grant to you the said Sir Robert John Wilmot Horton, full power and authority, with the advice and consent of the said Council of Government, to make, enact, ordain, and establish laws for the order, peace, and good government of our said island, subject to all such rules and regulations as therein mentioned : Now we do hereby revoke so much of the said letters-patent as relates to the said Council of Government ; and we do hereby further declare our pleasure to be, and do grant, ordain, and appoint, that there shall be within our said island of Ceylon two separate Councils, that is to say, one Council to be called the Legislative Council, and the other Council to be called the Executive Council : and we do direct that the said Councils shall respectively be constituted in such manner as is in that behalf directed by the instructions herewith given to you, or according to such further powers, instructions, and authorities as shall at any future time be granted to or appointed for you under our signet and sign manual, or our order in our Privy Council, or by us, through one of our principal Secretaries of State : And we do hereby give and grant to you the said Robert John Wilmot Horton, full power and authority, with the advice and consent of the said Legislative Council of our said island, to make, enact, ordain, and establish laws for the order, peace, and good government of our said island, subject nevertheless to all such rules and regulations as by the instructions herewith given to you, we have thought fit to prescribe in that behalf : Provided nevertheless, and we do hereby reserve to ourselves, our heirs, and successors, our and their undoubted right and authority to disallow any such laws, and to make and establish from time to time, with the advice and consent of Parliament, or with the advice of our or their Privy Council, all such laws as may to us or them appear necessary to the order, peace, and good government of our said island and its dependencies, as fully as if these presents had not been made. In witness, &c., witness, &c. And for so doing this shall be your warrant. Given at our Court at St. James's, the 19th day of March, 1833, in the third year of our reign.

By His Majesty's command.

GODERICH.

## WILLIAM R.

*Instructions to our right trusty and well-beloved Councillor, Sir Robert John Wilmot Horton, Knight, our Governor and Commander-in-Chief in and over our Island of Ceylon and its dependencies. Given at our Court at St. James's, the 20th day of March, in the third year of our reign.*

1. WHEREAS by a commission under our great seal of our United Kingdom of Great Britain and Ireland, bearing date the 23d day of April, 1831, in the first year of our reign, we did constitute and appoint you, during our pleasure, our Governor and Commander-in-Chief and over our island of Ceylon, in the Indian Seas; and by certain letters-patent, bearing date the 19th day of March instant, in the third year of our reign, we did revoke certain parts of that commission, and did declare our pleasure to be, that there should be within our said island two separate Councils, to be called respectively the Legislative Council and the Executive Council: And whereas by the said commission and letters-patent respectively, we did, amongst other things, refer to and require you to conform to and observe such general instructions as are therein respectively mentioned: And whereas the general instructions under our signet and sign manual, referred to in your said commission, bore date on the 30th day of April, 1831, and accompanied the same: And whereas we have deemed it expedient to revoke the said general instructions, and to substitute the general instructions following: Now, therefore, we do hereby declare our pleasure to be, that the said general instructions of the 30th day of April, 1831, shall be and the same are hereby absolutely revoked and annulled accordingly; we hereby in place and stead thereof substituting and requiring you and all others whom it may concern, to conform to and observe the several instructions following, that is to say:

2. You having, in pursuance of our said commission and former instructions, already taken the several oaths therein mentioned, it is our will and pleasure that the Lieutenant-Governor, or officer who, in the event of your death or absence from the said island, may be appointed to the temporary administration of the government in our said island, shall on his assuming and entering upon the execution of such office, with all due solemnity, cause our commission to be read and published in the presence of the Chief Judge and members of the Executive Council, and shall then and there take the oaths appointed to be taken by an act passed in the first year of the reign of King George the First, intituled "An Act for the further security of His Majesty's person and govern-

*ment, and the succession of the Crown in the heirs of the late Princess Sophia, being Protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and concealed abettors,"* as altered and explained by an act passed in the sixth year of his late Majesty King George the Third, intituled, "An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an act of the seventh year of her late Majesty Queen Anne, intituled, 'An Act for the Improvement of the Union of the two Kingdoms, as after the time therein limited requires the delivery of certain lists and copies therein mentioned to persons indicted of high treason or misprision of treason,'" or in lieu thereof, the oath required to be taken by an act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled, "An Act for the Relief of His Majesty's Roman Catholic Subjects," according as the said former acts or the said last-mentioned act shall be applicable to your case; and likewise that you do take the usual oath for the due execution of the office of our Governor and Commander-in-Chief in and over our said island, and for the due and impartial administration of justice; and further that you do take the oath required to be taken by the Governors of plantations, to do their utmost that the several laws relating to trade and to the plantations be duly observed, which said oaths the Chief Judge for the time being of our said island shall and he is hereby required to tender and administer to you; all which being duly performed, the Governor, Lieutenant-Governor, or officer appointed as aforesaid, shall administer to the said Chief Judge and to the members hereinafter appointed of our said Executive Council, and of the Legislative Council of the said island respectively, such of the oaths mentioned in the said several acts as shall be applicable to the case of such judge and of the individual member of our said respective Councils taking the same; and you are also to administer unto them the usual oath for the due execution of their places and trusts respectively, all which oaths shall also be administered by the Governor, Lieutenant-Governor, or person administering the government of our said island for the time being, to all such persons as shall hereafter be appointed to be members of our said Councils respectively, before they respectively enter upon the execution of the duties of such their office.

3. And we authorize and require the Governor, Lieutenant-Governor, or officer administering the government as aforesaid of our said island; from time to time and at any time hereafter, by himself, or by any other to be authorized by you in that behalf, to administer and to give to all and every such person or persons as you or he shall think fit, who shall hold any office or place of trust or profit, or who shall at any time or times pass into our said island, or be resident or abiding there, such

of the said oaths in the said several acts contained as shall be applicable to the case of the individual to whom the same shall be administered.

4. And whereas by the said letters-patent under the great seal of our United Kingdom of Great Britain and Ireland, bearing date the 19th day of March, 1833, we declared our will and pleasure that there should be within our said island of Ceylon a Council, to be called the Legislative Council of our said island, to be constituted in such manner as in your general instructions in that behalf should be directed: Now we do hereby signify and declare our pleasure to be, that the said Legislative Council of our said island of Ceylon shall always consist of fifteen persons, of whom nine shall at all times be persons holding offices within the said island at our pleasure, and the remaining six shall at all times be persons not holding any such office.

5. And we do hereby declare and appoint that the Chief Justice of the Supreme Court of our said island for the time being; the senior officer for the time being in command of our land forces in the said island, and not being in the administration of the government thereof; the Colonial Secretary for the time being; the Auditor-General for the time being; the Colonial Treasurer for the time being; the Government Agent for the Western Province for the time being; the Government Agent for the Central Province for the time being; the Surveyor-General for the time being; and the Collector of Customs at our port of Colombo for the time being, shall be such nine official members as aforesaid; and that any persons lawfully executing the duties of the said several offices, or any of them, during the absence, or suspension, or incapacity, or upon the death or resignation of any such officers, shall, during the performance of any such duties, be the official members of the said Legislative Council, as fully and effectually as though they had been by us appointed to such their offices.

6. And we do further declare and appoint that six persons, to be by you selected for that purpose from and out of the chief landed proprietors and principal merchants of the said island, who have been actually resident for a period of not less than two years in the said island, shall be the first or original un-official members of the said Legislative Council, and shall respectively hold their places therein during our pleasure, and which first or original un-official members shall by you be appointed by commissions to be for that purpose issued under the public seal of our said island.

7. And upon the death, incapacity, absence from the said island, suspension, or resignation of any of the said un-official members of the said Legislative Council, we do authorize and empower you to nominate and appoint by a commission, to be for that purpose issued under the

public seal of our said island, any fit and proper person or persons to fill any such vacancy or vacancies in the said Legislative Council, who shall be so appointed only until our pleasure shall be known.

8. And we do require you immediately to signify to us any original or subsequent appointment as aforesaid, to the intent that the same may by us be confirmed or disallowed as we shall see occasion.

9. And we do further declare our pleasure to be, that the said Legislative Council shall not be competent to act in any case unless six members at the least of such Council, in addition to yourself, or to the member who may preside therein in your absence, shall be present at and throughout the meetings of such Council.

10. And we do further declare, that in the said Legislative Council the official members shall take precedence of the un-official members, and that the official members shall between themselves take precedence according to the order in which their respective offices are hereinbefore enumerated, and that the said un-official members shall among themselves take precedence according to the priorities of their respective appointments.

11. And we do authorize and require you to preside in the said Legislative Council, except when you may be prevented by some insuperable impediment, and at any meetings of the said Council which may be holden during your absence, we do authorize and require the senior member present to preside. And we do further declare our will to be, that all questions proposed for debate in the said Legislative Council shall be decided by the majority of votes, it being our pleasure that you, or the member presiding in your absence, shall have an original vote in common with the other members of the said Council, as also a casting vote, if upon any question the votes shall be equally divided.

12. And for insuring punctuality of attendance of the members of the said Legislative Council, and for the prevention of meetings of the said Council being holden without convenient notice to the several members thereof, it is our pleasure and we do hereby direct, that you do frame and propose to the said Legislative Council for their adoption such standing rules and orders as may be necessary for those purposes, with such other standing rules and orders as may be best adapted for maintaining order and method in the despatch of business and in the conduct of all debates in the said Council, which rules and orders not being repugnant to your said commission, or to the said letters-patent, or to these your general instructions, or to any other instructions which you may receive from us, shall at all times be followed and observed, and shall be binding upon the said Legislative Council, unless the same or any of them shall be disallowed by us.



13. And whereas we have by our said commission given and granted to you full power and authority, with the advice and consent of the said Legislative Council of our said island of Ceylon, to make, enact, ordain, and establish laws for the order, peace, and good government of our said island, subject nevertheless to all such rules and regulations as by our general instructions we should think fit to prescribe in that behalf: Now we do hereby declare the following to be the several rules and regulations so mentioned and referred to in your said commission.

14. It is our will and pleasure and we do hereby direct, that no law or ordinance shall be made or enacted by the said Legislative Council, unless the same shall have been previously proposed by yourself, and that no question shall be debated at the said Council, unless the same shall first have been proposed for that purpose by you.

15. Provided nevertheless, and it is our pleasure, that if any member of the said Legislative Council shall deem any law fit to be enacted by the said Council, or any question proper to be there debated, and shall of such his opinion transmit a written statement to you, it shall be lawful for any such member of the said Legislative Council to enter upon the minutes thereof a copy of any such statement, together with the reason upon which such his opinion may be founded.

16. And we do further direct that minutes be regularly kept of the proceedings of the said Legislative Council by the Colonial Secretary or his assistant, and that the said Legislative Council shall not ever proceed to the despatch of business until the minutes of the last preceding meeting have first been read and confirmed or corrected as may be necessary.

17. And we do further require and enjoin you twice in each year to transmit to us through one of our principal Secretaries of State, a full and exact copy of the minutes of the said Legislative Council for the last preceding half-year, with an index to the subjects contained therein.

18. And it is our further pleasure that you do not propose or assent to any ordinance whatever respecting the constitution, proceedings, numbers, or mode of appointing or electing any of the members of the said Legislative Council or otherwise, in relation to any of the matters mentioned or referred to in your said commission and in these our instructions, which shall be in anywise repugnant to or inconsistent with such commission or instructions, or repugnant to any Act of Parliament, or to any order made or to be made by us in our Privy Council, extending to or in force within our said island, but that any such ordinance or pretended ordinances shall be absolutely null and void to all intents and purposes.

19. And you are expressly enjoined not to propose or assent to any ordinance whatever whereby any person may be impeded or hindered

from celebrating or attending the worship of Almighty God in a peaceable and orderly manner, although such worship may not be conducted according to the rites and ceremonies of the Church of England.

20. And we do further enjoin you not to propose or assent to any ordinance whatever whereby any new rate or duty may be imposed or levied, or our revenue might be lessened or impaired, or whereby our prerogative might be diminished or in any respect infringed, or whereby any increase or diminution might be made in number, allowance, or salary of any public officers which have or shall have received our sanction, without our special leave or command therein first received.

21. And we do further direct, that you do not propose or assent to any ordinance whatever whereby bills of credit or debentures, or other negotiable securities of whatever nature, may be issued in lieu of money on the credit of the said island, or whereby any government paper currency may be established therein, or whereby any such bills, or any other paper currency, or any coin, save only the legal coin of the realm, may be made or declared to be a legal tender, without special permission from us in that behalf first obtained.

22. And we do further enjoin and command you not to propose or assent to any ordinance whatever by which persons, not being European by birth or descent, might be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent would not be also subjected or made liable.

23. And it is our further pleasure that you do not propose or assent to any ordinances whatever for raising money by the institution of any public or private lotteries.

24. And it is our will and pleasure that you do not propose or assent to any ordinance whatever for the naturalization of aliens, or for the divorce of persons joined together in holy matrimony, or for establishing a title in any person to lands or other immoveable property acquired by any alien before his or her naturalization.

25. And we do further direct that you do not propose or assent to any ordinance whatever by which any tax or duty might be imposed upon transient traders, or upon persons residing and carrying on business for a short time within our said island, from which other traders or persons carrying on the like business would be exempt.

26. And we do further direct that you do not propose or assent to any ordinance whatever whereby any grant of money or other donation or gratuity may be made by the said Legislative Council to you, or to any member of the said Council.

27. And we do further order and direct that you do not propose or assent to any private ordinance whatever whereby the property of any individual may be affected, in which there is not a saving of the rights

of us, our heirs, and successors, and of all bodies politic and corporate, and of all other persons, excepting those at whose instance or for whose especial benefit such ordinance may be passed, and those claiming by, from, through, and under them.

28. And it is our will and pleasure that you do not propose or assent to any ordinance whatever to which our assent has once been refused, without express leave for that purpose first obtained from us.

29. And for the sake of orderly despatch, and the prevention of all undue precipitation in the enactment of ordinances intended to affect the property of individuals by the said Legislative Council, we do hereby authorize and require you from time to time, as occasion may require, to frame and propose to the said Council for their adoption, such standing orders, rules, and forms of proceeding as may be best adapted for the purposes aforesaid, and for insuring previously to the passing of any ordinance intended to affect or benefit private persons, that due notice may be given to all parties concerned of the provisions thereof, with ample opportunity for opposing the same, and that a full and impartial examination may take place of the grounds upon which the same may be proposed or resisted; and we do authorize you from time to time, with the consent of the said Council, to revoke, alter, or renew such rules, orders, and forms as there may be occasion; and we do direct that the same, when adopted by them, shall be duly observed in all their proceedings.

30. And it is our further will and pleasure, that all laws to be enacted by the said Legislative Council shall henceforth be styled "Ordinances enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof;" and that no other style or form shall ever henceforth be observed in any such enactments, and that all such ordinances be drawn in a simple and compendious form, avoiding prolixity and tautology.

31. And we do further direct, that when any ordinance shall have been passed by you, with the advice of the said Legislative Council, the same shall be forthwith laid before you for our final assent, disallowance, or other direction thereupon, to be signified through you, for which purpose we do hereby require you with all convenient speed to transmit to us, through one of our principal Secretaries of State, a transcript in duplicate of every such ordinance as aforesaid, duly authenticated under the public seal of the said island, and by your own signature; and we do direct that every such transcript be transmitted by the earliest occasion next after the enactment of the said ordinance, and that no such ordinance be made to take effect until our pleasure thereupon be first made known and signified to you, and by you to the inhabitants of the said island, excepting only in the case of ordinances

for raising the annual supplies for the service of the said island, and in any other cases in which the delay incident to a previous communication with us would be productive of serious injury or inconvenience, in which several cases we do hereby authorize you, with the advice of the said Legislative Council, to determine the time at which any such ordinance shall take effect and have its operation within the said island; which proceeding, with the reasons thereof, you shall on the earliest occasion report to us through one of our principal Secretaries of State. And we do hereby reserve to us, our heirs, and successors, full power and authority to confirm and finally enact or to disallow any ordinance which may be passed by you, with the advice and consent of the said Legislative Council, either in whole or in part, such confirmation or disallowance being from time to time signified to you through one of our principal Secretaries of State. And we do further reserve to ourselves, our heirs, and successors, with the advice of our and their Privy Council, full power and authority to amend any such ordinance as aforesaid in such manner as may be necessary and expedient; and if on any occasion our pleasure should not be signified to you upon any such ordinance as aforesaid within three years next after the date thereof, then and in every such case it is our pleasure that from and after the expiration of such term of three years, such ordinance shall be deemed to be disallowed, and shall thenceforth cease to have any force or effect within our said island.

32. And we do require and enjoin you to transmit to the Chief Judge of the Supreme Court of Judicature of the said island, to be enrolled in the said court, a transcript, duly authenticated in the manner before-mentioned, of every ordinance to be passed by you, with the advice and consent of the said Legislative Council, together with a certificate under your hand and seal of the effect of every order which you may receive from us for confirming or disallowing in the whole or in part, or for amending the provisions of any such ordinance, which certificates shall in like manner be enrolled in the said court, and there remain on record, to the intent that the judges of the said court may, without further or other proof, take cognizance of all ordinances to be made and promulgated for the peace, good order, and government of the said island: Provided always, and we do hereby declare, that the judges of the said court have not and shall not have any right or authority to prevent or delay the enrolment of any such ordinance, and that the validity thereof doth not and shall not depend upon such enrolment.

33. And we do further declare our pleasure to be, that in the month of January, or at the earliest practicable period at the commencement of each year, you do cause a complete collection to be published for

general information of all ordinances enrolled during the preceding year. And we do particularly require and direct that transcripts of all minutes and proceedings of the said Legislative Council be regularly transmitted every six months without fail, for our information, through one of our principal Secretaries of State.

34. And we do further direct, that all ordinances to be made by you, with the advice of the said Legislative Council, be distinguished by titles, and that the ordinances of each year be also distinguished by numerical marks, commencing on each successive year with number one, and proceeding in arithmetical progression to the number corresponding with the total number of ordinances enacted during the year; and that every such ordinance be divided into successive clauses or paragraphs, distinguished in like manner by numerical marks, and that to every such clause be annexed in the margin a short summary of its contents; and you are to observe that subjects which have no proper relation to each other, be not comprised in one and the same ordinance; and that no enactments be introduced into any such ordinance which may be foreign to its professed scope and object; and that no perpetual clause be part of any temporary ordinance; and that no law or ordinance be suspended, altered, continued, revised, or repealed by general words, but that the title and date of every such law or ordinance be particularly mentioned and expressed in the ordinance suspending, altering, continuing, revising, or repealing the same.

35. And we do direct that no law shall by you be proposed to the said Legislative Council or enacted by them, unless the draft of the same shall first have been published in the Gazette of our said island, or otherwise made publicly known for at least three weeks next before the enactment thereof.

36. And whereas by our said letters-patent we have, as before mentioned, signified our pleasure to be, that there should be within our said island a Council, to be called the Executive Council thereof, and to be constituted in such manner as we should by these our instructions direct: Now we do direct and declare that the said Executive Council shall consist of the several persons following; that is to say, the senior officer in command of our land forces in the said island, and not being in the administration of the government thereof; the Colonial Secretary for the time being; the King's Advocate for the time being; the Colonial Treasurer for the time being; and the Government Agent for the Central Province for the time being.

37. And we do hereby direct and require, that in the execution of the powers and authorities committed to you by your said commission, you do in all cases consult with the said Executive Council, excepting only when the matters to be decided shall be too unimportant

to require their advice, or too urgent to admit of such advice being given by the time within which it may be necessary for you to act in respect of any such matters; provided that in all such urgent cases you do subsequently and at the earliest practicable period communicate to the said Executive Council the measures which you may so have adopted with the reasons thereof.

38. And we do authorize and require the said members of the said Executive Council to meet in obedience to any summonses which shall be by you for that purpose be addressed to them, and to consult with and advise you upon any question connected with the executive government of our said island, which may by you be proposed for their consideration: provided always that two of such members at the least be always present on any such occasion, and that distinct minutes be kept of their deliberations and proceedings, which minutes it shall be the duty of the said Colonial Secretary, or his assistant, to keep. And we do require you to transmit to us, twice at least in each year, through one of our principal Secretaries of State, full and exact copies of all such minutes.

39. And we do authorize you in your discretion, and if it shall in any case appear right so to do, to act in the exercise of the power committed to you by your said commission, in opposition to the advice which may in any such case be given to you by the members of your said Executive Council; provided nevertheless that, in any such case, you do fully report to us, by the first convenient opportunity, every such proceeding with the grounds and reasons thereof.

40. And whereas we have by our said commission given to you full power and authority in our name and in our behalf, but subject nevertheless to such provisions as are in this respect contained in your general instructions, to make and execute in our name, and under the public seal of our said island, grants of waste lands to us belonging within the same, to private persons, or for the public uses of our subjects there resident: Now we do hereby require and authorize you, from time to time as occasion may require, to cause all necessary surveys to be made of the vacant or waste lands to us belonging in our said island, and to cause the persons making such surveys to report to you what particular lands it may be proper to reserve for public roads, or other internal communications by land or water, or as the sites of towns, villages, churches, school-houses, or parsonage-houses, or as places for the burial of the dead, or as places for the future extension of any existing towns or villages, or as places fit to be set apart for the recreation or amusement of the inhabitants of any town or village, or for promoting the health of such inhabitants, or as the sites of quays or landing places or towing-paths, which it may at any future time be expedient to erect, form, or establish on the sea-coast, or in the

neighbourhood of navigable streams, or as places which it may be desirable to reserve for any other purpose of public convenience, utility, health, or enjoyment; and you are specially to require persons making such surveys to specify in their reports, and to distinguish in the charts or maps to be thereunto annexed, such tracts, pieces, or parcels of land within our said island as may appear to them best adapted to answer and promote the several purposes before mentioned. And it is our will, and we do strictly enjoin and require you, that you do not on any pretence whatsoever grant, convey, or demise to any person or persons any of the lands which may be so specified as fit to be reserved as aforesaid, nor permit or suffer any such lands to be occupied by any private person for any private purpose.

41. And we do further charge and require you not to make any grant of land to or in trust for or for the use of any private person, by any one instrument, or by successive instruments, exceeding 100 acres in the whole, without our special permission for that purpose first obtained.

42. And whereas in and by your said commission we have granted unto you power and authority, in our name and in our behalf, to grant to any person convicted of any crime in any of the tribunals in our said island an absolute or conditional pardon: Now we do enjoin and require you, in every case where you shall be applied to for any such pardon, and in every case whatever in which sentence of death shall have been passed, to obtain from the judge who presided at the trial of any such offender, a report in writing of the proceedings upon any such trial, and of the evidence then adduced, and of the opinion of such judge whether the conviction of any such offender was obtained in due course of law, and whether any reason exists for the total or partial remission or commutation of any such sentence. And we do strictly command that you do not upon any occasion permit any such kind of punishment to be inflicted as can in no case be inflicted by the law of England, and that you do not remit any fine or forfeiture above the value of 50*l.* sterling, without previously signifying to us the nature of the offence committed and the amount of the proposed remission, and receiving our directions thereupon; but in the meanwhile it shall be lawful for you to suspend the payment of such fine or forfeiture.

43. It being our intention that all persons inhabiting our island under your government should have full liberty of conscience, and the free exercise of all such modes of religious worship as are not prohibited by law, we do hereby require you to permit all persons within our said island to have such liberty, and to exercise such modes of religious worship as are not prohibited by law, provided they be contented with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.

44. It is our further will and pleasure that you recommend proper measures for erecting and maintaining schools in order to the training up of youth to reading, and to a necessary knowledge of the principles of religion. You are not however to propose or assent to any ordinance respecting religion, without a clause suspending its operation until our pleasure shall have been signified thereupon, unless a draft thereof shall have been previously transmitted by you for our consideration and approval.

45. And whereas we have by our said commission authorized you, upon sufficient cause to you appearing, to suspend from the exercise of his office within our said island, any person exercising the same under and by virtue of any commission or warrant granted or to be granted by us, in our name or under our authority, and we have by the said commission strictly required and enjoined you, in proceeding to any such suspension, to observe the directions in that behalf given to you in and by your general instructions: Now we do charge and require you that, before proceeding to any such suspension, you do consult with the said Executive Council, and that you do signify, by a statement in writing to the person so to be suspended, the grounds of such your intended proceeding against him, and that you do call upon any such person to communicate to you in writing a statement of the grounds upon which and the evidence by which he may be desirous to exculpate himself, and that you transmit both of the said statements to us, through one of our principal Secretaries of State, by the earliest conveyance.

46. And we do hereby direct and instruct you, that all commissions and appointments to be granted by you to any person or persons for exercising any office or employment in or concerning the said island be granted during pleasure only, and that whenever you shall appoint to any vacant office or employment any person not by us especially directed to be appointed thereto, you shall at the same time expressly apprise such person that such appointment is to be considered only as temporary and provisional, until our allowance or disallowance thereof be signified.

47. And whereas great prejudice may happen to our service and to the security of the said island, by the absence of the Governor, you shall not, upon any pretence whatever, quit the said island without having first obtained leave from us for so doing under our sign manual and signet, or through one of our principal Secretaries of State.

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[The following account of the introduction of the jury system in Ceylon was intended to be inserted in the account of the laws and of the courts of the colony, but was by accident omitted from its proper place. The mistake



was not discovered till the preceding sheet was printed off. As it records an event of the greatest possible importance to the colony, and reflects the highest honour on the right honourable and learned judge by whom such an alteration of the system of administering justice, in a distant colony and among a foreign people unused to our institutions, was planned and executed, it has been thought right to insert it here; the more especially since the most wise and most politic measure thus adopted with the happiest effect in Ceylon has been since advantageously imitated with respect to our East Indian possessions.]

From the year 1802, the period at which the first royal Charter of Justice for the Island of Ceylon was published on that island, to the year 1811, justice had been administered in the Supreme Court of Ceylon, both in civil and criminal cases, by two European judges, according to what is called in Holland the Dutch-Roman law, without any jury.

In 1810 it was determined by His Majesty's ministers in England, on the representation of Sir Alexander Johnston, that the two European Judges of the Supreme Court on that island should for the future, in criminal cases, be judges only of the law, and that juries composed of the natives of the island should be judges of the fact in all cases in which any native prisoners were concerned. In November, 1811, accordingly, a new royal Charter of Justice, under the great seal of England, was published in Ceylon, by which, amongst other things, it was in substance enacted that every native of the island, of whatever caste or religious persuasion he might be, when tried for a criminal offence before the Supreme Court, should have the right of being tried by a jury of his own caste, and that the right of sitting upon juries, in all such cases, should extend, subject to certain qualifications, to every half-caste, and to every other description of native upon the island, to whatever caste or religious persuasion he might belong.

The following part of the account is extracted from Sir Alexander Johnston's letter on the subject to the Board of Control:—

“Every native of Ceylon, provided he be a freeman, has attained the age of twenty-one, and is a permanent resident in the island, is qualified to sit on juries. The fiscal or sheriff of the province, as soon as a criminal

sessions is fixed for his province, summons a considerable number of jurymen of each caste, taking particular care that no jurymen is summoned out of his turn, or so as to interfere with any agricultural or manufacturing pursuits in which he may be occupied, or with any religious ceremony at which his caste may require his attendance. On the first day of the sessions the names of all the jurymen who are summoned are called over, and the jurymen, as well as the magistrates and police officers, attend in court and hear the charge delivered by the judge. The prisoners are then arraigned; every prisoner has a right to be tried by thirteen jurymen of his own caste, unless some reason why the prisoner should not be tried by jurymen of his own caste can be urged to the satisfaction of the court by the advocate-fiscal, who, in Ceylon, holds an office very nearly similar to that held in Scotland by the Lord-Advocate, or unless the prisoner himself, from believing people of his own caste to be prejudiced against him, should apply to be tried either by thirteen jurymen of another caste, or by a jury composed of half-castes or Europeans. As soon as it is decided of what caste the jury is to be composed, the registrar of the court puts into an urn, which stands in a conspicuous part of the court, a very considerable number of the names of jurymen of that caste out of which the jury is to be formed; he continues to draw the names out of the urn, the prisoner having a right to object to five peremptorily and to any number for cause, until he has drawn the names of thirteen jurymen who have not been objected to; these thirteen jurymen are then sworn, according to the form of their respective religions, to decide upon the case according to the evidence and without partiality. The advocate-fiscal then opens the case for the prosecution (through an interpreter if necessary) to the judge, and proceeds to call all the witnesses for the prosecution, whose evidence is taken down (through an interpreter if necessary) in the hearing of the jury, by the judge, the jury having a right to examine and the prisoner to cross-examine any of the above witnesses. When the case for the prosecution is closed, the prisoner states what he has to urge in his defence, and calls his witnesses, the jury having a right to examine, and the prosecutor to cross-examine them, their evidence being taken down by the judge; the prosecutor is seldom or ever, except in very particular cases, allowed to reply or call any witnesses in reply."

## MAURITIUS.

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MAURITIUS is a small island in the Indian Ocean, lying between  $19^{\circ} 56'$  and  $20^{\circ} 30'$  south latitude and  $57^{\circ} 17'$  and  $57^{\circ} 47'$  east longitude. It is nearly elliptical in form, and measures about 12 leagues from north to south, and 10 from east to west. Its circumference is between 60 and 70 miles. The little island of Bourbon lies to the south-west of it. The heat of the climate is very great upon the coast, but the higher parts of the island are more temperate. The soil produces in great luxuriance every kind of tropical vegetable. Sugar, coffee, spices, and ebony are the principal exports; rice, salt provisions, and manufactured articles, the chief imports. The population, now estimated at above 80,000, is stated to have quadrupled in the last 20 years. Plantations are scattered all over the country, and the only town is Port Louis, situated at the bottom of the harbour in a valley enclosed by lofty and rugged declivities. It was formerly built for the most part of wood, but the greater portion having been accidentally destroyed by fire in 1816, it has since been rebuilt in a better manner.

### HISTORY AND CONSTITUTION.

The island was discovered by the Portuguese, under one of the family of Mascarenhas, early in the sixteenth century. They called it at first *Ilha do Cerné*. The Dutch however first planted it, and they gave it the name it now bears from Prince Maurice of Nassau. Their settlement was formed on the south-eastern shore of the island before 1639, and seems to have been abandoned in 1644, and resumed in 1650, but the settlers were finally compelled to abandon it in 1710. The French, who had possessed themselves of the neighbouring island of Mascarenhas, which they named the island of Bourbon, took possession of the Mauritius as soon as the Dutch had quitted it.

In 1723 a Governor and Council were appointed. In 1734 Mahé de la Bourdonnais was appointed Governor, and in 1766 he was succeeded by M. Poivre. Both Governors materially benefited the colony, the first by selecting a new port on the north-western coast of the island, as the situation for the capital, on account of its being on the leeward side of the island, and allowing the free entrance and egress of ships, which, though they could easily enter, could not readily quit the old port chosen by the Dutch; and the last, by procuring at great pains and expense plants of cloves and nutmegs from the islands of the Eastern Archipelago, notwithstanding the positive directions given by the Dutch government to root them up and destroy them. The island was captured in December, 1810, by a force under General Abercrombie, and was ceded to Great Britain at the peace of 1814. It is now put upon the footing of our other sugar colonies.—Bernardin du St. Pierre, *Voyage de l'Isle de France*, and *Ency. Metrop.*; 3 & 4 Wm. 4, c. 56, s. 9.

This island is governed, like our other crown colonies, by Orders in Council, and the executive government is intrusted in them to a Governor and Council. The Governor receives a salary of £8000 a year. The President and Members of the Council receive no salary in that capacity. The salary of Colonial Secretary was £3000 a year. There is an establishment for mortgages and registrations. The salary of the Chief Commissary of Police is £1000 a year. The Chief Judge, who is also Commissary of Justice and Judge of Vice-Admiralty, receives a salary of £3500 a year. The Attorney-General, who was also standing English Counsel, received about £850 a year; and as a Judge of the Court of Appeal the further sum of £560. The Vice-President of the Court of Appeal received £840 a year, and four Judges of the Court £560 each. The President of the Court of First Instance received a salary of £700 a year, and his fees were estimated at £200. The two Assistant Judges £560 each, and the senior of them received fees to the amount of about £60. The Procureur-General received £840 a year in that character, and a further sum of £360 as King's Attorney to the Land Court. The first and second substitutes of the Procureur-General received £560 each. The Government Advocate, who was also King's Advocate in the Vice-Admiralty Court, received £480 a year,

salary and fees amounting to about £500. The Curator of intestates' and vacant estates had no salary, but received fees arising on a per centage on sums paid into the office, and which were calculated to amount to about £880 a year.

The acting Government Agent of the Seychelles received £600 a year, and the Chief Justice of Peace £240 a year. The two Assistant Justices had no salary, but received fees amounting to about £40 a year each.—4th Rep. Com. of Enquiry Col. Rev. and Expen. (Mauritius,) House of Commons Papers, Feb. 1831, No. 194.

Some of these offices appear by the Order in Council to have been abolished.—See post.

#### LAWS. (1)

The island capitulated on the 3d of December, 1810.

By the 7th article of the capitulation it was stipulated, that property of the inhabitants should be respected; and by the 8th, that the inhabitants should preserve their religion, their laws and customs.

By a proclamation dated on the 5th December, 1810, it was declared that the rules hitherto observed for the administration of civil justice and of police should be preserved, and that the laws and usages in force up to that day should also be continued.

The inhabitants were promised all the advantages of commerce enjoyed by others of His Majesty's subjects. As to the administration of the different branches of government, it was declared that a new proclamation would announce the method in which it should be carried on.

The proclamation, dated on the 28th December, 1810, (afterwards confirmed in substance by another of the date of January, 1814,) was accordingly published. By the 1st article of that proclamation, all the ecclesiastical establishments and the religious functionaries were continued under the same laws as heretofore.

By the 2d article, all the establishments, as well judicial as those of police, were to be preserved and continued *durante bene placito* under the English government, upon the same footing and subject to the same

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(1) See ante, 3 to 16, on the general topic, how far the colonies are subject to the law of the mother country.

regulations as those which existed at the time of the capitulation, under the following modifications:—that all judgments should be given in the name of His Majesty the King of Great Britain and Ireland; that all decrees of the Court of Appeal established in the island, from which an appeal might formerly have been made to the Superior Courts in France, should be, until otherwise ordered, the subject of appeal to the Governor of the islands, who, after having transmitted them to the Judicial Assessor and Magistrate of the colony for his advice and opinion thereon, should give his own decision. An appeal was to be allowed to the King in Council in all matters where the subject in dispute exceeded the value of 4000 piastres.(2)

#### *Courts.*

At the time of the conquest by Great Britain the colony was governed by four out of the five codes which had been promulgated by Napoleon.(3) Some of the courts however had been instituted before or during the existence of the French Republic.

By a decree of the Council of State of the 3d of Germinal in the year 11, the Tribunal of the First Instance, and the Tribunal of Appeal were established. The Tribunal Terrier was directed to be composed of the Captain-General, Prefect, the Commissary of Justice, or of four members of the Tribunal of Appeal, who should be chosen by the Captain-General. By a subsequent ordinance it was declared, that the tribunals of this colony should be composed of the Tribunal of Appeal and the Civil Tribunal. The Tribunal of Appeal was to consist of a president, a vice-president, three judges, four supernumeraries, a commissary of the government, a substitute, exercising in case of need the functions of the commissary, and a secretary.

The Civil Tribunal was to consist of one judge, of one substitute, of a commissary of the government, and a secretary.

The Civil Tribunal was to have cognizance over all affairs civil and criminal, matters of commerce, admiralty, and police.

The Tribunal of Appeal was to decide in the last resort

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(2) The sum is now settled by the charter at £1000 sterling.

(3) See ante, 23.

upon all judgments in the Court of First Instance in the following manner:—In civil matters the tribunal was to be composed of five judges, and of seven in criminal matters. When all civil jurisdiction was taken away from religious persons, a decree was passed by the Captain-General Decaen, declaring that it was indispensable to establish a civil commissary in each district of the colony, to prepare, receive and preserve public acts. Such an officer was accordingly appointed, and charged with the keeping of the registers of births, marriages and deaths. He was to be appointed by the Captain-General, upon the recommendation of the Colonial Prefect and of the Commissary of Justice.

The Court of Appeal was modified from time to time by proclamations of the Governor. It is now finally regulated by the Order in Council.

#### *Codes of Laws.*

By a decree dated on the 25th of Vendemiaire in the year 14, the Code Civil was promulgated in this colony, and again, with the necessary changes required by the colony, was declared to be in force upon the 21st April, 1808. The Code de Commerce (with a few alterations) was promulgated upon the 14th July, 1809. The Code Noir had been in force since the month of December, 1723. The Code Penal established in the colony, is that which was agreed to by the Colonial Assembly on the 7th August, 1793, and confirmed by a proclamation of Governor Farquhar as to all the population, free or slaves, on the 6th November, 1816. It was provided, however, that this should not affect the regulation of slaves by the provisions of the Code Noir.

The Colonial Assembly, upon the 1st of August, 1793, promulgated a code upon municipal and correctional police.

The code of Civil Procedure was adopted from France on the 20th July, 1808, with a few alterations rendered necessary by the circumstances of the colony.

#### *Colonial Council.*

This body was created by a decree of the 29th September, 1810. The decree recited that the colony was bound

to contribute its assistance to the expense of providing for its own safety, and in order to raise the revenues necessary for this purpose a council was created, consisting of eleven persons, to be chosen from among the principal inhabitants and traders of the different parts of the island, three from the Port Napoleon, and one from each of the other districts. The members of the Council were to be named by the Captain-General, on the presentation of the Colonial Prefect and the Commissary of Justice, from a list of nine candidates elected for the district of Port Napoleon, and three for each of the other districts. Any vacancy in the Council was to be filled up by the first of the candidates whose names remained upon the list of election. Electoral Chambers were to be formed for the election of these candidates for the Council, and members of these Chambers were to be named by the Captain-General, upon the presentation of the Colonial Prefect and the Commissary of Justice.

#### *Council of the Commune.*

By a proclamation of Governor Farquhar, dated on the 8th September, 1817, it was ordered, that there should be formed in the town of Port Louis a Council of the Commune composed for the town of twelve notable inhabitants, and for each other quarter of the island of three proprietary inhabitants. All these inhabitants were to be at least 30 years of age, unless they were born in the colony, when they might be appointed at 27 years of age. They must have resided 10 years in the colony, and be possessed of an annual income of 5000 piastres in the country, or 3000 in the town of Port Louis. The members who were to compose the Councils of Communes were to be nominated, subject to the approbation of His Majesty's ministers, by his Excellency the Governor, from lists containing three times the number of persons to be so nominated. The members were to continue in office for five years, when a new nomination was to take place from new lists. Any vacancy happening during the five years was to be filled up from the first list. The Council were to elect a president, a vice-president, and a secretary, and might proceed to business when the president or vice-president and six other members were present. These councils were to have the power of discussing



questions transmitted to them by the Governor upon the internal administration of the colony, and of discussing matters relating to trade and commerce and public education, and roads and canals, and manufactures and agriculture, and reporting thereon to the Governor. These councils were however never to forget, that their deliberations upon subjects foreign to those indicated to them by the Governor, would expose those who joined in them to personal responsibility.

By a subsequent proclamation of the 26th September, 1817, the number of members of Council for the town of Port Louis was increased from 12 to 15.

By a despatch of the Earl of Bathurst, dated on the 31st August, 1820, the Governor was directed, as appears by his proclamation of the 29th January, 1821, to suppress these councils of the commune, and they were suppressed accordingly.

#### *Powers of the Governor.*

By a proclamation dated on the 22d of January, 1814, Governor Farquhar declared the surprise and indignation with which he had heard of a judgment of the Court of Appeal in the island of Bourbon. The proclamation stated, that several persons therein named had been accused before the Court of First Instance of having contravened the laws against the slave trade; that they had pleaded that the said laws were not in force in the island of Bourbon, as they had not been legally published in the tribunals there; that the court admitting that they had been promulgated in the official gazette of the government, had nevertheless laboured to adopt an opinion so favourable to all the violators of the laws of His Majesty's empire, and had declared that such official promulgation by the government did not affect the isle of Bourbon, since each island had its separate tribunals; it had therefore desired the accused to be acquitted. The proclamation went on to state, that the Procureur-General had appealed from this judgment to the Court of Appeal of Criminal Justice in the island, and that by that court the judgment of the Court of First Instance had been confirmed; that his Excellency considered that the magistrates who had confirmed the before-mentioned judgment had violated their functions in a serious and most culpable

manner, since they had permitted themselves to establish a jurisdiction contrary to the rights of nations and to the British laws, so that an odious and justly proscribed traffic was treated as if still permitted at the isle of Bourbon; that his Excellency was of opinion that these laws were in force in the colonies from the moment they came into possession of His Britannic Majesty, and that his Excellency knew how to maintain these laws, and to make them respected; and for this double purpose he ordained, first, that all the judges of the tribunals of the isle of Bourbon who had given and confirmed the judgment aforesaid, should be suspended from their functions until it pleased His Royal Highness the Prince Regent to make such orders as he might think fit upon the report which would be forwarded to him by his Excellency the Governor; and secondly, that those members of the two tribunals who had acted in this affair, should not be capable of being appointed to any public employment until the pleasure of His Royal Highness should be known.(4)

*Court for the Trial of Piracies.*

This court was established by an instruction issued to Governor Farquhar, dated February 1, 1814. The instruction recited the act of the 46 Geo. 3, intituled, "An Act for the Summary Adjudication of Crimes committed in distant Countries and upon the Sea," and also an act of the 28th Hen. 8, intituled "An Act concerning Piracies," and then appointed, as commissioners for the purpose of carrying into effect these two acts, three persons, of whom the Governor for the time being, the Judge of the Court of Vice-Admiralty, or his deputy legally appointed, the Chief Justice and Commissary of Justice, or the Secretary of the colony, should always be one, and who were to examine, with good and loyal men of the isle of France, in such manner as they thought fit, into the commission of all such crimes.

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(4) A statement reached this country just as this sheet was going to press, that some of the judges of the colony had been suspended from the exercise of their functions, on the ground that they were the holders of slaves, contrary to the terms of the Order in Council. As that order

merely declares that the persons therein specified shall not be the holders of slaves, but does not provide for its own enforcement, this suspension of the functions of the offending judges must have taken place under the authority vested in the Governor by his commission or instructions.

*Curator of Vacant Possessions.*

This officer was established by a decree of 13th Brumaire in the year 12, and his duties were settled by that decree. Some changes were made by a subsequent decree of the 10th Messidor in the year 12, further alterations by a decree of the 22d of Nivose in the year 13, and again by decrees of the 18th July and the 16th September, 1809, when vacant possessions became subject to the Code Napoleon.

By a proclamation dated on the 4th January, 1811, the office of Curator of Vacant Possessions was intrusted to Mr. Shaw, then the Judicial Assessor. By another proclamation dated on the 16th January, 1812, the formalities applicable to Frenchmen were equally extended to the succession of Englishmen or foreigners who should die on the island intestate. The funds arising from such successions were directed to be paid into the public treasury, to be at the disposal of the government.

*Burials.*

The authority to bury a corpse must be given by the civil commissary, upon a declaration of the death made by two witnesses, the nearest relatives, or neighbours of the deceased.

*Prosecution of Crimes and Offences.*

By a decree of the 25th of Messidor, in the year 12, the Commissary of Government in the Tribunal of First Instance, in each of the islands, was charged with the prosecution of all offences in the said islands.

*Divorce.*

The French law of divorce has been adopted in the Mauritius.

*Registration of Deeds.*

Almost all civil acts must be registered, such as wills and deeds, both of which must be registered within three months after their date, and such instruments cannot be

put in force without being duly registered. Neglecting to register these instruments within the appointed time subjects the party to the payment of double fees for registration.

#### *Arrest.*

By a decree of 23d March, 1808, it was ordered that any foreigners not domiciled in France, might be arrested by a Frenchman upon a judgment given against such foreigner. He might also be provisionally arrested at the discretion of the judge, before the judgment, unless he gave such security as the judge might think sufficient.

#### *Mortgages.*

These are of course expressly governed by the Code Napoleon, but after the promulgation of that code in the island of Mauritius, a question was raised whether it was necessary to renew the registration of these mortgages at the expiration of every ten years. This question was submitted to the French government, and by a decree of the Council of State, dated on the 15th of December, 1807, and confirmed by the Emperor on the 22d January, 1808, it was decided that renewed registration was necessary, and that the question was resolved by the article 2154 of the Code Napoleon. That article is in the following terms,—“The registration preserves the mortgage and the privileges connected therewith during the period of ten years from the date of the registration; its effect ceases if this registration is not renewed before the expiration of that term.”

#### THE SEYCHELLES.

By an ordinance dated 23d September, 1806, a tribunal for the maintenance of the public peace was established for the islands of the Seychelles. This tribunal was to be composed of one judge and a secretary, (4) and there were to be two supplementary judges, who, in his absence, from illness or other cause, were to supply his place. The Justice of the Peace was to decide alone and without

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(4) See this court now provided for by the recent Order in Council.

appeal on all causes purely personal and affecting personal property to the value of 200 francs or 40 piastres, and subject to appeal to the amount of 600 francs or 125 piastres. In the latter case his judgments might be executed on the party giving security for restitution. He might decide alone, and without appeal, to the amount of 200 francs, and subject to appeal to any amount whatever in the following cases:—Complaints of injury done by animals to fields, trees, or harvests. Complaints of trespasses upon property. Tenants' repairs to houses held by them. Indemnity claimed by tenants for interruption of enjoyment when the right to indemnity was not contested. The payment of the wages of workmen, and the performance of engagements relating thereto. Actions for verbal insults and breaches of the peace, at least when the parties are not tried criminally for the same.

By an ordinance dated 12th March, 1810, sworn valuers were to be appointed in the case of the sale of immovable property by order of the court.

A proclamation issued by Governor Farquhar, on the 18th of March, 1812, confirmed these two ordinances; another dated on the 3d September, 1817, recited them, and directed that the Justice of the Peace appointed under these ordinances, and the civil agent of the government and his deputy, uniting to themselves three notable inhabitants nominated by the civil agent, should present to the government as speedily as possible, for the approbation of the government, a project for a Council of the Commune at the Seychelles, such as was necessary for the place; but this was not done, as the Councils of the Commune were speedily afterwards suppressed.—See ante, 587.

#### *Woods and Forests.*

A special tribunal to protect the rights of the crown in these matters was continued by proclamation of the 1st February, 1813, according to the form in which it had been established in 1766.

## MAURITIUS—CHARTER OF JUSTICE.

At the Court at St. James's, the 13th of April, 1831 ;  
Present, the King's Most Excellent Majesty in Council.

WHEREAS it is necessary to make provision for the better administration of justice in His Majesty's island of Mauritius and its dependencies, His Majesty doth therefore, by and with the advice of his Privy Council, order, and it is hereby ordered, that His Majesty's Supreme Court of Civil and Criminal Justice within the said colony, called the Cour d'Appel, shall henceforth be holden by and before three judges only, and no more ; and that the chief or senior judge of the said court shall henceforth bear the title of Chief Judge and First President ; and that the second of the said judges shall henceforth be called and bear the title of Vice-President ; and that the third of the said judges shall henceforth be called and bear the title of Assistant-Judge of the said court : And it is further ordered, that His Majesty's court in the said island, called the Tribunal de Premiere Instance, shall henceforth be holden by and before, and shall consist of one judge, to be called the President of the said tribunal, and one other judge, to be called a Judge Suppléant : And it is further ordered, that in case any judge of either of the said courts should, by reason of any such lawful recusation as hereinafter mentioned, or by sickness, absence, suspension, resignation, or any other cause, be unable to perform the duties of such his office, it shall be lawful for the Governor of the said colony to complete the number of judges of such court, by appointing, in His Majesty's name and on his behalf, some proper person to act as and be a judge of such court during such vacancy, or until His Majesty's pleasure shall be known : And it is hereby further ordered, that if in any criminal case the law which is now or hereafter shall be in force within the said island and its dependencies, shall require the presence in either of the said tribunals of a greater number of judges than are hereinbefore mentioned, then and in every such case it shall be lawful for the Governor of the said colony, in His Majesty's name and on his behalf, to appoint such an additional number of judges for any such special occasion as may be necessary to complete the whole number of judges so required by law ; but all appointments which may be so made shall endure so long only as may be necessary to provide for any such emergency, and shall be renewed from time time as occasion may require : And whereas on the 17th day of February, 1830, the Governor of the said island of Mauritius, with the advice of the Council of Government thereof, made an ordinance, bearing date on the day and year last afore-

said, intituled "An Ordinance for the establishing of a Court composed of his Excellency, to judge certain prises á partie et recusations," directed against the Court of Appeal "in this colony:" Now, it is further ordered that the said ordinance shall be, and the same is hereby confirmed and allowed, and that any recusation which may hereafter be made of any judge of either of the said tribunals, shall be heard, tried, adjudged, and determined in the manner provided by the said ordinance, and not otherwise: And it is hereby further ordered, that all and every the powers, authorities, and jurisdictions heretofore vested in the judges of the said tribunals respectively, or in a majority of them, shall continue and be vested in the judges hereinbefore mentioned or in the majority of them: Provided nevertheless, and it is further ordered, that in all cases in which the Court of Vice-Admiralty of the said colony hath jurisdiction, whether by virtue of any Act of Parliament or by virtue of the commission of the judge of the said court, such jurisdiction shall be exclusive, and that it shall not be competent for the said Cour d'Appel or for the said Tribunal de Premiere Instance to hear, decide, or take cognizance of any such case; and that if, in any suit or action or other proceeding depending in the said Cour d'Appel or in the said Tribunal de Premiere Instance, it shall be made to appear that the question arising in any such action, suit, or proceeding is within the jurisdiction or competency of the said Court of Vice-Admiralty, then and in every such case the said Tribunal de Premiere Instance or the said Cour d'Appel, as the case may be, shall declare itself incompetent: And it is further ordered that the office of Grand Juge, Commissaire de Justice of the said island of Mauritius, is and shall be abolished: And it is further ordered, that in all civil cases depending before the said Cour d'Appel or the said Tribunal de Premiere Instance, the Procureur-General of the said island, or his substitutes, are and shall be relieved from the duty heretofore incumbent on them of making their conclusions for the assistance of the said tribunals: And it is further ordered that no Judge of the said Cour d'Appel, nor the Judge of the said Tribunal de Premiere Instance, nor the suppléant of the said tribunal, nor the Procureur-General of the said island, nor the Advocate-General thereof, nor the Judge of the Court of Vice-Admiralty, nor any surrogate of such judge, shall be the owner of any slave, nor be the proprietor of or have any share or interest in any land cultivated by the labour of slaves, either directly or by any person or persons as a trustee or trustees for him; and each of the said several officers is hereby declared incompetent to be or act as the manager, overseer, agent, or attorney of, for, or upon any plantation or estate within the said island or its dependencies; Provided nevertheless, that nothing herein contained shall prevent any such officer as aforesaid from hiring

for and employing in the domestic service of himself, or any members of his family, any number of slaves, if it shall be first made to appear by such officer, to the satisfaction of the Governor of the said island, that it is not in his power to hire free persons to perform such domestic services : And it is further ordered, that there shall be in the town of Port Louis in the said island, a Petit Court, to be holden by a single judge, to be called the Juge de Paix of the said town, for the decision of all civil causes of small amount arising within the said island, and for the trial of all crimes and offences of a low degree committed therein, and that from the judgments, sentences, and orders of the said Petit Court, no appeal shall lie to any other tribunal or judge in the said island or elsewhere ; and that there shall also be in any one or more of the dependencies of the Mauritius, which the Governor of the said island, with the advice of the council of government thereof, may select, a Petit Court, to be holden in like manner by a single judge, to be called the Juge de Paix of such dependency, for the decision of all civil cases of small amount arising therein, and for the trial of all crimes and offences of a low degree which may be there committed ; and that the Governor of Mauritius, with the advice and consent of the council of government of the said island, shall, by any ordinances to be from time to time for that purpose made, define and limit the extent of the jurisdiction, both civil and criminal, of any such Petit Court, and fix and regulate the forms of proceeding, the rules of practice, and the nature of the process to be observed therein respectively : And it is hereby further ordered, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action depending in the said Cour d'Appel of the said island of Mauritius, to appeal to His Majesty in Council, his heirs and successors, or his or their Privy Council, against any final judgment, sentence, or decree of the said court, or against any rule or order made in any such civil suit or action having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules, regulations, and limitations following ; that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £1000 sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question to or respecting property, or any civil right, amounting to or of the value of £1000 sterling, or in case the same shall affect the right or alleged right of any person to freedom, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said Cour d'Appel, may within fourteen days next after the same shall have been made, pronounced, or given, apply to the said Cour d'Appel by petition, for leave to appeal therefrom to



His Majesty, his heirs, and successors, or his or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money, or perform any duty, the said Cour d'Appel shall and is hereby empowered either to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or to direct that the execution thereof shall be suspended pending the said appeal, as to the said court may in each case appear the most consistent with real and substantial justice; and in case the said Cour d'Appel shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given shall before the execution thereof enter into good and sufficient security, to be approved by the said court, for the due performance of such judgment or order as His Majesty, his heirs, and successors, shall think fit to make thereupon; or in case the said Cour d'Appel shall direct the execution of any such judgment, decree, order, or sentence to be suspended pending any such appeal, the person or persons against whom the same shall have been given shall in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said court, for the due performance of such judgment or order as His Majesty, his heirs, and successors shall think fit to make thereupon: And it is further ordered, that in all cases security shall also be given by the party or parties appellant, to the satisfaction of the said court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by His Majesty, his heirs, and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then, and not otherwise, the said Cour d'Appel shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to His Majesty, his heirs, and successors, in his or their Privy Council, in such manner and under such rules as are observed in appeals made to His Majesty in Council from his plantations and colonies: Provided nevertheless, and it is further declared and ordered, that nothing herein contained shall extend or be construed to extend to take away, diminish, or derogate from the undoubted power and authority of His Majesty, his heirs, and successors, in his or their Privy Council, and upon the humble petition at any time of any person or persons aggrieved by any judgment or determination of the said Cour d'Appel, to admit, his, her, or their appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as His Majesty, his heirs, and successors, shall in any such special case think fit to prescribe: And it is further ordered, that in all cases of appeal allowed

by the said Cour d'Appel, or by His Majesty, his heirs, and successors, the said court shall certify and transmit to His Majesty, his heirs, and successors, in his or their Privy Council, a true and exact copy of all proceedings, judgments, decrees, and orders had or made, and of all evidence received or given in such causes so appealed, so far as the same have relation to the matter of appeal; such copies to be certified under the seal of the said court: And it is further ordered, that the said Cour d'Appel shall in all cases of appeal to His Majesty, his heirs, and successors, conform to and execute such judgments and orders as His Majesty, his heirs, and successors shall think fit to make therein, in such and the same manner as any judgment, decree, or order of the said Cour d'Appel could or might have been executed. And the Right Honourable the Lord Viscount Goderich, one of His Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

## THE AUSTRALIAN COLONIES.

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THE name of AUSTRALIA has of late years been affixed to those two islands in the southern hemisphere, separated by Bass's Straits and the islands circumjacent, called by the early Dutch navigators NEW HOLLAND. The change of name was introduced by the celebrated French geographer, Malte Brun, who, in his division of the globe, denominated these islands Austral-Asia, which has since, for the sake of brevity, been called Australia.

Australia, properly speaking, consists of many islands, but one is so much larger than every other island on the face of the globe, that it is classed as a continent, in order to convey to the mind a just idea of its magnitude. Stretching from the 115th to the 153d degree of east longitude, and from the 10th to the 37th of south latitude, it averages 2700 miles in length, 1800 in breadth, and balanced, as it were, upon the tropic of that hemisphere in which it is situated, it receives the fiery heat of the equator at one extremity, while it enjoys the refreshing coolness of the temperate zone at the other. Van Diemen's Land is the second island, but is very inferior in extent to the first. By the colonists the larger island is generally called Australia, and the smaller one Van Diemen's Land, or Tasmania. On the eastern coast of the former is the colony known as New South Wales, and on the western coast is the Swan River Settlement, commonly called Western Australia. The settlements at Van Diemen's Land occupy each of the four coasts of that island.

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\* \* The chapters upon the Australian settlements were contributed by my friend, Henry W. Parker, Esq.

of Gray's Inn, Barrister at Law, & the author of a work upon Van Diemen's Land.—C. C.

## NEW SOUTH WALES.

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THIS colony, which in the commissions appointing the Governors is called His Majesty's Territory of New South Wales, is situated on the eastern coast of New Holland. An Order of Council dated the 6th December, 1786, and the King's warrant, dated 3d April, 1787, for letters-patent appointing a Vice-Admiral and a Judge of the Vice-Admiralty Court for the new settlement, declare its limits to extend "from the northern cape or extremity of the coast called Cape York, in the latitude  $10^{\circ} 37'$  south, to the South Cape, the southern extremity of the coast in the latitude of  $43^{\circ} 39'$  south, and inland to the westward as far as  $135^{\circ}$  east longitude, reckoning from the meridian of Greenwich, including all the islands adjacent in the Pacific Ocean within the latitudes aforesaid." At that period it was not known that Van Diemen's Land was not part of the main island, as the channel separating it was not discovered until the year 1797. An Order in Council, dated 14th June, 1825, declared Van Diemen's Land to be independent of the colony at New South Wales, thereby limiting the southern boundary of the colony to the shores of Bass's Straits. Norfolk Island, (1) on which a settlement was formed by Lieut. King, shortly after the colony at Sydney Cove was established, is one of the islands within the limits (2) of the boundary marked out in the order of council.

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(1) This settlement was abandoned some years since, but in 1825 the island was again occupied, and there is now formed there an establishment for the reception of convicts of the first class—malefactors, whose crimes denote them to be hardened offenders.—Parker's Van Diemen's Land, p. 40.

(2) One of the judges of the Supreme Court, when the prisoners detained in custody on charges of hav-

ing committed offences within the island amount to any considerable number, proceeds from Sydney, accompanied by military or naval officers for a jury, and a counsel appointed by the Governor to defend the prisoners, and holds a court of oyer and terminer at this island. This course has been adopted, as it was found that convicts frequently committed offences merely for the sake of going to Sydney to be tried.

The located or settled parts of the colony are divided into 19 districts,<sup>(3)</sup> and contain several towns, the chief of which are Sydney, the seat of the colonial government, and now a free warehousing port, Paramatta, Windsor, Newcastle, Liverpool, Maitland, &c. The generality of the land is not accounted fit for the plough, but it produces herbage upon which sheep thrive, this and the fine climate has tended to produce those superior fleeces which now compete in the English market with the far-famed Saxon and Spanish clips.

#### HISTORY AND CONSTITUTION.

New Holland is said to have been discovered by the Spanish Navigator, Don Pedro Fernando de Quiros, in 1609, but there is much reason to believe that the land which he discovered was one of the small islands to the north of New Holland. In 1616 it was visited by Theodoric Hertoge, who called that part on which he landed Eendraaght Land, and in 1618 Zeachen saw another part of the coast, which he named Arnheim Diemen. Jan Van Edels in 1619 gave his own name to a portion of the southern coast. In 1687, and again in 1699, Dampier surveyed the western shores of the island, and the Dutch navigator Carpenter shortly afterwards surveyed the gulf, which he named Carpentaria; but from that time, until Captain Cook in 1770 explored the eastern coast, little or nothing was known of this extensive country.

The description Captain Cook, on his return to England, gave of Botany Bay, (so called from the number of new plants discovered on the shores by Mr. afterwards Sir Joseph Banks, and Dr. Solander,) induced the government to fix upon it as a place to which convicts should be transported; and His Majesty by two separate Orders in Council, dated 6th December, 1786, declared and appointed the place to which convicts should be transported, to be the eastern coast of New South Wales, or some one or other of the islands adjacent within the limits before described. The ships appointed to proceed

(3) These 19 districts or counties are, Cumberland, Camden, St. Vincent, Gloucester, Durham, Hunter, Cook, Westmoreland, Argyle, Mur-

ray, King, Georgiana, Bathurst, Roxburgh, Phillip, Brisbane, Bligh, Macquarie, and Wellington.

to the eastern coast were His Majesty's ship *Sirius*, and His Majesty's brig *Supply*, with seven transports and three store-ships, having on board, besides the officers of the new settlement, soldiers and marines, 768 male convicts, (4) 222 female convicts, and 27 children. The expedition sailed from the Mother-bank on Thursday the 10th March, 1787, and arrived at Botany Bay on the 20th January, 1788. Captain Phillip, who had been appointed Governor of the settlement, immediately proceeded to examine the shores of Botany Bay, but not finding there a situation well calculated for the site of a town, he removed to Port Jackson, and on the banks of one of its coves he resolved that the new colony should be established. Every person belonging to the settlement had disembarked on the 6th February, and being assembled in the presence of the Governor, the Judge-Advocate (Captain Collins) read His Majesty's commission and the letters-patent for establishing courts of civil and criminal judicature. The Governor was invested with the power of pardoning malefactors sentenced to death by the criminal court; (5) but if he thought the sentence ought to be carried into execution, he was required to give a warrant under his hand and seal to the Provost-Marshal, who was to cause the judgment to be executed according to the instructions contained in that warrant. The Governor was empowered to act as judge in the Court of Appeals, and in that court to hear and determine cases of appeal from the Civil Court, where the debt or thing in demand should exceed £300. He was also constituted a justice of the peace, with the same power that a justice has in England, and Vice-Admiral of the territory, with powers similar to those usually given to persons appointed to like offices in the British colonies in America: he was also invested

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(4) Two years after the settlement was formed several convicts stated, that the respective periods for which they had been sentenced had expired, and it was then, and not till then, discovered, that the papers necessary to ascertain these important particulars had been left in England. The prisoners were therefore detained until the documents were received.

(5) The extensive powers of pardon given to the Governor by this

commission form an exception to the general rule. In all the other colonies the Governors are expressly prohibited from granting pardons in cases of murder or treason; and they can only respite criminals convicted of these offences till His Majesty's pleasure shall be known. Probably this exception was occasioned by the peculiar circumstances under which this settlement was established.—C. C.

with authority to hold general courts-martial, to confirm or to set aside the sentence, and also to make orders for the good government of the colony.

The first act of parliament relating to the colony is the 27 Geo. 3, c. 2; it enacted, that "it shall be lawful for His Majesty by his commission under the great seal to authorize the Governor, or in his absence the Lieutenant Governor, to convene from time to time, as occasion may require, a court of criminal jurisdiction for the trial and punishment of all such outrages and misbehaviours as if committed within this realm would be deemed and taken according to the laws of this realm, to be treason or misprision thereof, felony or misdemeanor." The court was to be a court of record, and to consist of the judge-advocate and such six officers of the sea and land service as the Governor by precept issued under his hand and seal required to assemble. The letters-patent, dated 2d April, 1787, directed that a court of criminal jurisdiction should be instituted, and they empowered it to inquire of, hear, determine, and punish all treasons, misprisions of treason, murders, felonies, forgeries, perjuries, trespasses, and other crimes or offences whatsoever that might be committed in the colony. The mode of proceeding was this:—the charge against an offender was reduced into writing and exhibited by the judge; witnesses were examined upon oath, and according to the opinions of the majority of the court the prisoner or defendant was adjudged to be guilty or not guilty. (6) If guilty, and the offence was capital, the court pronounced judgment of death in like manner as if the prisoner had been convicted by the verdict of a jury in England, or awarded such corporal punishment as the major part of the court deemed meet; and in cases not capital the court adjudged such corporal punishment as the majority of the members determined upon. No offender, however, could be sentenced to suffer death unless five members of the court concurred in finding him guilty, or if five members did not agree in the award, until the King's pleasure was signified thereupon.

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(6) Mr. Judge-Advocate Wylde used to retire with the members of the court, after the evidence in each case was concluded, to deliberate upon the verdict in an adjoining room. This practice was continued until

1820, when the Judge-Advocate, on the suggestion of Mr. Commissioner Bigge, charged the members of the court in the presence of the prisoner and the public.—Mr. Com. Bigge's Rep. p. 14.

A Vice-Admiralty Court for the trial of offences committed upon the high seas was also constituted.(7)

The letters-patent dated 4th February, 1814, recited the part of the former patent of the 2d April, 1787, relating to the institution and appointment of the criminal court, and made no change in its mode of procedure, its powers, or in the extent of its jurisdiction. The criminal laws continued to be administered under the same authority until the act 4 Geo. 4, c. 96, was passed; that act authorized his Majesty to remodel the courts for the administration of the criminal law, and the charter of justice, dated 13th October, 1823, which followed, placed the courts upon their present footing, there having been no new charter issued since the passing of the 9 Geo. 4, c. 83,(8) the provisions of which last-mentioned act did not materially vary from the 4 Geo. 4, c. 96.

The authority under which the first civil judicature of the colony and its dependencies exercised its functions, was derived solely from His Majesty's commissions and letters-patent, for no act of parliament(9) empowered His Majesty to establish any form of civil judicature; and the form marked out and established was as great a departure from the laws and usages of England as that of the criminal judicature.

The Civil Court, consisting of the Judge-Advocate and two inhabitants of the settlement appointed by the Governor, heard and determined in a summary way all pleas of lands, houses, debts, contracts, and all personal pleas whatsoever. The court was empowered to summon the parties, to examine witnesses on oath, and to issue execution under the hand of the judge-advocate.

A party, feeling aggrieved by a decision of this court, was at liberty to appeal to the Governor, and from him, where the debt or thing in demand exceeded the value of

(7) Collins' (Judge-Advocate) account of the colony of New South Wales. Barrington, in his work upon New South Wales, also states, that the Vice-Admiralty Court had the power to try offenders; but Mr. Wentworth, in the second edition of his work, published in 1820, says, that "the Court of Vice-Admiralty consists of the judge-advocate, and takes cognizance of captures, salvages, and

such other matters of dispute respecting property as arise on the high seas, but it has no criminal jurisdiction. It is probable that when the court of criminal judicature was instituted, that the criminal business of the Vice-Admiralty Court was removed to it."

(8) See the Charter, post.

(9) The 27 Geo. 3, c. 2, only authorized His Majesty to establish a court of criminal judicature.



£300, to the King in Council. This court was also empowered to grant probates of wills and administrations of the personal estates of intestates dying within the colony.

The civil and criminal judicatures were united under the presidency of one person holding the office of judge-advocate until the year 1814, when an alteration was effected by a new commission and letters-patent, dated on the 4th February in that year. The change consisted of a separation of the civil and criminal judicatures, and of the appointment of three new civil courts, viz. Supreme Court, Governor's Court in New South Wales, and Lieutenant-Governor's Court in Van Diemen's Land.(1) The principal court at this period was the High Court of Appeals, which was presided over by the Governor, assisted by the Judge-Advocate.(2) In this court appeals were heard against decisions of the Supreme Court, and its judgments were final in all cases where the sum sued for did not exceed £3000, but where it exceeded that amount, an appeal lay to the King in Council. The Supreme Court was composed of a judge of the court, and two magistrates appointed by precept from the Governor, and had jurisdiction in all pleas where the matter in dispute exceeded £50 sterling. The Governor's Court consisted of the Judge-Advocate and two inhabitants appointed by precept from the Governor, and took cognizance of all pleas (not arising between party and party at Van Diemen's Land,)(3) where the amount sought to be recovered was under £50 sterling, and from its decision there was no appeal.

These courts regulated their decisions by the laws of England, but the judge of the Supreme Court endeavoured to give effect to the local regulations(4) published at different periods by the authority of the Governor of the colony when he found them to be conformable to the spirit or to the provisions of the law of England, and to

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(1) Mr. Comm. Bigge's Report, p. 2.

(2) 2d edit. Wentworth, p. 341.

(3) The Lieut.-Governor's Court in Van Diemen's Land had a similar jurisdiction in that island.

(4) Mr. Commissioner Bigge's Report. Mr. Wentworth, in the second edition of his work, denies this, and says, "these courts take no notice

whatever of the laws and regulations which have been made at various times by the local government. The enforcement of these is left entirely to the magistracy, who assemble weekly in the different towns throughout the colony, and take cognizance of all infractions as well of the colonial as of the criminal code."

be beneficial in their operation, or even where he thought that they were essential for the support of the system by which the colony was governed. (5)

The act 4 Geo. 4, c. 96, followed by a charter of justice framed in pursuance of its provisions, effected as great a change in the mode of administering the civil as it did in that of the criminal law of the colony. Since then the 9 Geo. 4, c. 83, has made some slight changes, but not such as to render a new charter actually necessary.

#### CIVIL GOVERNMENT.

The Governor of this colony is appointed to his office by two letters-patent, the first constituting him Governor of the territory of New South Wales, and the second, Captain-General and Governor-in-chief of Van Diemen's Land. (6) The Governor is the principal member of the Executive Council, consisting, besides himself, of the Lieutenant-Governor, the Colonial Secretary, the Colonial Treasurer, and the Archdeacon.

He presides and votes at the sittings of the Legislative Council, and when the numbers on a division are equal he has the casting vote.

The Governor is authorized to impose on importation into the colony duties not exceeding 10s. a gallon upon spirits, the produce and manufacture of the United Kingdom, or the produce of British West India colonies; not exceeding 15s. upon all other spirits; not exceeding 4s. per lb. upon tobacco, and not exceeding £15 per cent.

(5) The Governor issued proclamations and orders upon any subject—sometimes, but not always, the courts required them to be obeyed. Governor Macquarie did even more, for upon one occasion, without issuing any public order or proclamation, he directed two constables to conceal themselves in a place where the inhabitants of Sydney were accustomed to walk, and to arrest those who trespassed on a particular spot. Three freemen, three convicts, and two women were arrested, and immediately taken to gaol; the next day the Governor, without seeing or hearing

them in defence, ordered 25 lashes to be inflicted on each of the three freemen and on one of the convicts, 30 lashes on the other two convicts, and directed the women to be confined for 48 hours. This illegal act of the Governor created universal alarm among the colonists.—See Mr. Com. Bigge's Rep. p. 48.

(6) The warrants for appointing General Bourke, the present Governor, to these offices, are severally dated 30th May, 1831. He is the first Governor appointed since Van Diemen's Land was declared independent of New South Wales.

upon goods, wares and merchandize, not being the growth, produce or manufacture of the United Kingdom.(7)

The Governor is also empowered to levy upon colonial manufactured spirits a duty not exceeding the duty upon imported spirits.(8)

The 20th section of the 9 Geo. 4, c. 83, declares it to be at present inexpedient to call a legislative assembly for the colony, and in lieu of one provides, that it shall be lawful for His Majesty, by warrants under his sign manual, to constitute and appoint a council of such persons resident in the colony, not exceeding fifteen nor less than ten, as His Majesty shall be pleased to nominate and appoint. In case of death, absence, removal, or resignation of a member of the Council, the Governor may appoint another to act in his stead until His Majesty's pleasure be known. In concert with at least two-thirds of the members of the Council on the list, (exclusive of the Governor or presiding member,) the Governor has the power to make laws and ordinances for the peace, welfare, and good government of the colony, such laws and ordinances not being repugnant to the act 9 Geo. 4, c. 83, or to any charter or letters-patent, or order in council, or to the laws of England, but consistent with such laws so far as the circumstances of the colony will admit. The Governor has the initiative of all laws and ordinances to be submitted to discussion in the Council; and it is provided, that notice of the general objects of every act proposed to be brought into consideration, shall be sent by the Governor to one or more of the newspapers for insertion, eight clear days at least before a law shall be passed, or in case there be no newspapers, such notice shall be given by some other mode of public advertisement; but in cases of emergency, or where actual danger would arise from the delay of eight days, the notice may be dispensed with. If a majority of the members dissent from any bill, and enter the grounds of their dissent in the minutes of the Council, the bill cannot be passed into a law. Any member of the Council may request the Governor to introduce a bill for the consideration of the Council; and if the Governor shall decline, he must lay his reasons in writing, together with a copy of the bill,

(7) 3 Geo. 4, c. 96, continued in force by 9 Geo. 4, c. 83, s. 26.

by 3 Geo. 4, c. 96, and subsequently made perpetual by 9 Geo. 4, c. 83, s. 26.

(8) 59 Geo. 3, c. 114, continued

before the Council; and any member disapproving of such refusal, may enter upon the minutes the grounds of his disapprobation.(9) Every bill passed by the Council must be transmitted within seven days to the Supreme Court to be enrolled, and after fourteen days from the date of such enrolment it comes into operation. It is provided, however, that if the judges shall represent to the Governor that such bill is repugnant to the act 9 Geo. 4, c. 83, to the charters or letters-patent, or to the laws of England; then the Governor must suspend such bill until it has been brought, together with the representation, under the review of the Council, and if the Governor and Council upon review of such bill, differ from the opinions of the judges, and still adhere to the proposed law, a written notice of such resolution is to be transmitted by the Governor to the judges, and such law shall thenceforward take effect and be binding until His Majesty's pleasure shall be known, notwithstanding any repugnance or supposed repugnance to the laws or charters.(1)

The Governor and Council are empowered to impose taxes for local purposes, but the duties levied by the Governor by authority of 52 Geo. 3, c. 114, and 3 Geo. 4, c. 96, are to be applied to such purposes as the Governor may appoint by any law or ordinance.(2)

The members of the Council are justices of the peace by virtue of their office,(3) and they take an oath faithfully to advise and to assist the Governor.(4)

#### COURTS.

##### *The Supreme Court.*

The 4 Geo. 4, c. 96, empowered His Majesty, by his letters-patent, to appoint the Supreme Court, and accordingly His Majesty issued letters-patent under the great seal, bearing date 13th October, 1823, by the authority

(9) 9 Geo. 4, c. 83, s. 21.

(1) § 22. Should such a difference of opinion exist, the judges are required to state in writing fully and at length the grounds of their opinion, and copies of their reasons are to be transmitted to the King.

(2) 9 Geo. 4, c. 83, s. 27.

(3) 9 Geo. 4, c. 83, s. 30.

(4) They were formerly sworn not to reveal anything which should become known to them in their capacity of members, but since the last act has come into operation the oath has not been administered.

of which the Supreme Court still maintains its jurisdiction. (5) The 9 Geo. 4, c. 83, did not make it necessary that a new Charter of Justice should be issued, as the second section of that act enacted that until other letters-patent were issued, the Supreme Court "so instituted by His Majesty's letters-patent under the great seal, bearing date the 13th day of October, in the fourth year of His Majesty's reign (1823,) shall retain and exercise the jurisdiction and power in such court vested by His Majesty's said letters-patent, so far as the same may not be altered by this act, as fully and effectually as if such court had been instituted in virtue and pursuance of this act; and the said letters-patent, and all orders, acts, matters, and things made and done in pursuance of the powers and authorities vested in His Majesty in and by the said act passed in the 4th year of the reign of his present Majesty, (Geo. 4th,) shall be of the same force and effect as if the same had been issued, made, done, and performed by virtue and in pursuance of this act."

The Supreme Court is a Court of Record, and has cognizance of all pleas, civil, criminal, or mixed, and jurisdiction in all cases whatsoever, as fully and amply to all intents and purposes in New South Wales and all and every the islands and territories which now are or hereafter may be subject to or dependent upon the government thereof, as His Majesty's Courts of King's Bench, Common Pleas, and Exchequer at Westminster, or either of them, lawfully have or hath in England. On the trial of every issue of fact joined between the parties in any action at law cognizable in the Supreme Court, where the sum or value of the matter in dispute exceeds £500 sterling, and where the trial shall not be by jury, the judges cause the evidence to be taken down in writing by a clerk or officer, and to be repeated in open court to the witnesses giving the same, and the evidence so taken is entered upon the proceedings of the court as matter of record; and in every case of appeal to His Majesty in Council copies of all the documents and papers that are produced and given in evidence, or rejected, are required

(5) The Registrar is the responsible keeper of the archives of the Supreme Court, having the custody of wills, &c. He is the depository of the memorials of registry of all titles of land and securities upon land in

the colony, the only officer empowered to receive such memorials upon oath; moreover, the Registrar has sole charge of intestates' estates.—New South Wales Magazine, November 1, 1833, p. 194.

to be duly authenticated by the clerk and annexed to the record as part thereof

The powers that the judges have who are appointed to preside in the court, are as extensive as those of the Judges of the Courts of King's Bench, Common Pleas, and Exchequer, in England.

The Supreme Court is a Court of Oyer and Terminer and Gaol Delivery; it is also empowered to inquire of, hear, and determine all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences, of what nature or kind soever, committed or that shall be committed upon the sea, or in any haven, river, creek, or place where the admiral hath power, authority, or jurisdiction, or committed or that shall be committed in the islands of New Zealand, Otaheite, or any other island, country, or place situate in the Indian or Pacific Oceans, and not subject to His Majesty or to any European state or power, by the master or crew of any British ship or vessel, or any of them, or by any British subject sailing in or belonging to, or that shall have sailed in or belonged to, and have quitted any British ship or vessel to live in any part of the said islands, countries, or places, or that shall be there living; and that all persons convicted of any of the offences so to be inquired of, heard, or determined in the said court shall be subject and liable to, and shall suffer all such and the same pains, penalties, and forfeitures as by any law or laws now in force persons convicted of the same would be subject and liable to in case the same had been committed and were respectively inquired of, tried, heard, and determined and adjudged in England, any law, statute, or usage to the contrary notwithstanding. (6)

The Supreme Court is also a Court of Equity, and has power and authority to administer justice, and to do, exercise, and perform all such acts, matters, and things, necessary for the due execution of such equitable jurisdiction, as the Lord High Chancellor can, or lawfully may, within the realm of England; and all such acts, matters, and things as can or may be done by the said Lord High Chancellor within the realm of England in the exercise of the common law jurisdiction to him belonging. The Charter of Justice expressly authorizes the Supreme

(6) An information or indictment upon 9 Geo. 4, c. 83, s. 4, must aver that the offender is a British subject, and that the ship is a British ship;

and evidence must be given to support both these allegations. See *Rex v. Helsham*, 4 Car. & Payne's Rep. p. 394.

Court to appoint guardians and keepers of infants and their estates, and also of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves and their estates, which the court may inquire of, hear, and determine by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

The 9 Geo. 4, c. 83, enacts that the Supreme Court shall have ecclesiastical jurisdiction, and shall have full power and authority to administer and execute such ecclesiastical jurisdiction and authority as hath been or shall be committed to the said Supreme Court by His Majesty's said charter or letters-patent so issued or to be issued as aforesaid; provided that in all cases where the executor or executors of any will, upon being duly cited, shall refuse or neglect to take out probate, or where the next of kin shall be absent and the effects of the deceased shall appear to the said courts to be exposed and liable to waste, it shall be lawful for the said courts respectively to authorize and empower the registrar or other ministerial officer of the said Supreme Court to collect such effects, and hold or deposit or invest the same in such manner and place, or upon such security and subject to such orders and directions as shall be made, either as applicable in all such cases or specially in any case, by the said court in respect of the custody, control, or disposal thereof.

The Charter of Justice gives the court full power to grant probates under the seal of the court "of all or any of the inhabitants of that part of the said colony and its dependencies situate in the island of New Holland, and of all other persons who shall die and leave personal effects within that part of the said colony;" and where the executor refuses to act, or the testator dies intestate, or does not name an executor resident within the colony, to commit letters of administration with the will annexed, and to sequester the goods and chattels and credits and other effects whatsoever of such persons so dying, in cases allowed by law, as the same is and may be now used in the diocese of London, and to demand, require, take, hear, examine, and allow, and if occasion require to disallow and reject the amounts of them, in such manner and form as is now used or may be used in the said diocese of

London. The court however is required, where letters of administration shall be committed with the will annexed, for want of an executor appearing in due time to sue forth the probate, to reserve the power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue for the same. The court may grant letters of administration with the will annexed to any one or more of the lawful next of kin of such person so dying and being then resident in the colony and of the age of twenty-one years; and in case no such person shall be resident, or being cited shall not appear and pray the same, then to the registrar of the court, or to any other person or persons as the court shall see fit. The probates are not to extend to money, goods, chattels, or effects not within the colony. The court, before granting letters of administration, is bound to require a bond of every person to whom they shall be committed, and also to require sureties for the due administration of the effects. The court has the power to allow an executor or administrator such commission or per centage out of the assets as shall be just and reasonable for his pains and trouble, if the executor or administrator shall have passed his accounts and obeyed the orders of the court.

The Supreme Court is empowered by an Act of the Legislative Council to appoint trustees to discover, collect, and receive the estates and effects of insolvents, and to make orders for the distribution of the produce of such effects equally and rateably among the creditors. It may be observed that the laws in force within the colony upon the subject of insolvents' effects, are based upon the Insolvent Debtors' Act in operation in England, and that the powers of the court in this respect are precisely the same as the Insolvent Debtors' Court in England, excepting that the Judge of the Supreme Court has authority to grant certificates discharging the insolvent from future liability, with the consent in writing of the major part in number and value of the creditors, with a restriction, however, that such certificate shall not be allowed a second time to the same person, "unless his or her estate, when collected and realized, shall be sufficient to pay at least 15s. in the pound; and also that no person or persons who shall be declared insolvent a third time or oftener shall be entitled to any such certificate."



An Order in Council, dated October 19th, 1824, authorized the Chief Justice of the Supreme Court to make "rules and orders touching and concerning the time and place of holding the sittings of the Supreme Court, the forms and manner of proceeding, and the practice and pleadings upon all indictments, informations, actions, suits, &c., and all other matters to be brought therein." Accordingly, on the 22d June, 1825, the Chief Justice, Francis Forbes, Esq., issued several orders regulating the practice of the court. The first was, perhaps, the most important. It directed "that the respective rules and orders, forms and manner of practice and proceeding of and in His Majesty's principal Courts at Westminster, that is to say, the Courts of King's Bench and Exchequer and the High Court of Chancery, and of and in the Ecclesiastical Court within the diocese of London, called the Consistory Court, shall from and after the date of this order be adopted and followed in the exercise of the several jurisdictions of the said Supreme Court of New South Wales, so far as the circumstances and condition of the said colony shall require and admit, and so far as such rules and orders and forms of practice shall or may not be herein or at any time hereafter altered by some rule or order specifically provided and adapted to the conduct of business in the said Supreme Court." The second order provided that the proceedings within the several and respective jurisdictions of the Supreme Court should be commenced and continued in a distinct and separate form. The third order provided that the fees for business should be the same as those charged by and allowed to the practitioners and officers of the courts in England. There were others to the number of nine, but they have since been abrogated.

On the 9th September, 1826, several new rules were issued. The first required that "every action at law which shall hereafter be commenced shall be entered in a short manner, setting forth the form of the action, and the nature of the process which may be required, in a book to be kept in the office of the Supreme Court, to be called the 'clerk's book,' for such purpose; and shall be signed by the plaintiff in such action, or by his lawful attorney." The ordinary process of the court is a summons calling upon the defendant to appear on a day named to answer in an action commenced; the nature of

the action is then set forth, according to the form in which it has been already entered in the clerk's book, and the process concludes "as will more particularly be set forth in a declaration to be then and there exhibited." The third rule gives the form of a warrant of arrest, and the next declares the times when process shall be returnable. The fifth rule alters the times previously fixed for the terms, declaring they shall commence and determine on the first and last days of the months of March, June, September, and December; provided "that if the said months shall commence or end upon a Sunday, the said terms shall commence the Monday following or end the Saturday preceding." The ninth rule directs that the manner of appearing shall be by a brief entry in the "clerk's book" under the entry of the action appeared to; but if the defendant shall fail to appear on the day required by the process, the plaintiff shall enter an appearance and proceed as if the defendant had appeared. The tenth rule is one of rather a novel character, for it allows a defendant or defendants, when he or they cannot be found by the sheriff, to be summoned to appear by advertisement in the Sydney Gazette, and in case the defendant or defendants do not appear on the day mentioned in such notice "the plaintiff may, upon due proof thereof, enter a suggestion to such effect in the said court, and the same shall be minuted in the clerk's book; and the plaintiff may thereupon proceed in such action in like manner as if such defendant or defendants had been (7) outlawed by due course of law." The eleventh rule requires a declaration or a particular of demand to be filed before the day on which the defendant is to appear, in default of which a *non pros* may be entered. The twelfth rule allows particulars of demand to be filed instead of a declaration in all cases where the Courts at Westminster require particulars to be given. The same rule directs that when a declaration is filed it shall set forth "in a plain, simple, and compendious manner, the true cause for which the plaintiff brings his action, and particularly avoiding all superfluous forms and unnecessary matter." The thirteenth rule provides that no nonsuit or demurrer shall be allowed for mistake between actions of trespass

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(7) See ante, 93, n. (9), and the cases there cited.

and case. The fourteenth, fifteenth, and sixteenth rules require that pleas or demurrers shall be filed within eight days from the return of the writ; but allow the general issue to be filed "as often as the nature of the defence intended to be relied on will admit of a general denial of the plaintiff's cause of action," or, instead of a special plea, the general issue and the filing notice of the special matter upon which the defendant intends to insist in evidence. But if any new matter shall arise during the proceedings, a judge may allow the defendant to amend his notice, and then evidence of such new matter may be received. A replication must be filed within twelve days from the return day of the writ. The twenty-third rule allows witnesses, whose evidence is necessary in any action, and who are about to leave the colony, to be examined before a judge, and the depositions to be read at the trial; and the twenty-fourth rule directs that judges may issue commissions for the examination of witnesses *de bene esse* in cases where the witnesses shall be beyond the seas, or aged or infirm, or otherwise disabled from attending the trial. The twenty-fifth rule provides that the original pleadings in the cause, and the book of minutes relating thereto, shall be in the place of, and of the like force and effect as, a record of *nisi prius* regularly made up and passed. By rule 26 the verdict is to be entered by the clerk in his minute book. Rule 31 provides "that immediately after judgment shall be pronounced it shall be entered in the clerk's book, and such entry shall set forth the debt, damages, costs, or thing recovered, and the day on which such judgment was pronounced. And the party obtaining such judgment shall, before execution, file in the office of the Supreme Court a roll of such judgment, wherein shall be set forth in a compendious manner the substantial parts only of the proceedings; viz. the style of the court, the term and time of signing judgment, the names of the parties and of their respective attornies, the nature of the action, the material parts of the pleadings, and the judgment of the court. By rule 43 execution may be taken out at any time after judgment obtained and entered. The attorney for the party is required to indorse on the writ the sum *bonâ fide* due, and the sheriff is to levy accordingly. The defendant may point out the lands he desires to be first sold, and should they not realize the amount levied for,

the sheriff is to proceed to sell the remainder; and in case there shall be any surplus arising from the sale, the sheriff is to cause it to be paid to the defendant, or his attorney, within six days after he shall have received the same. By rule 41 it is declared "that where any judgment by default shall be obtained against any person who at the time of such judgment shall have been absent (8) from New South Wales, and such person shall, at any time within two years after the passing of such judgment, appear before the court and allege that more money hath been levied under such judgment than was due, the court shall, in a summary way, proceed to inquire into the case; and if it shall be proved that more money hath been so levied or paid than was justly due, the court shall order the surplus, together with the levy fees thereon, to be restored by the plaintiff, and upon his refusal to make such restitution, the sum so ordered to be restored, together with the costs, shall be levied by execution. Rule 42. "That where judgment shall pass by default against any infant or person being *non compos mentis*, such judgment may be inquired into and set aside in the like summary manner by the said court, at any time within five years after such disability shall be removed; provided, however, that no such summary proceeding shall be allowed in cases where, by the laws of England, infancy is not assignable for error." The forty-third rule provides that no judgment shall be entered up on a warrant of attorney unless it shall appear, by the subscription of a justice or an attorney duly admitted in the Supreme Court, to have been made in his presence. The forty-fourth rule allows the representatives, when a party to a suit dies, if such action, suit, or other proceeding might have been originally prosecuted or maintained by or against the heirs, executors, or administrators, to be made parties to such suit, and thereupon a suggestion of the death of the original party and the admission of his heirs, executors, or administrators in his stead, shall be entered in the clerk's book, and such action, suit, or other proceeding shall be continued in like manner as if such heirs, executors, or administrators had been originally parties thereto. The forty-fifth rule declares "that it

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(8) See ante 93, n. (9), and the cases there cited.

shall be lawful for a plaintiff or defendant in any suit where a party being a *feme sole* at the commencement of the suit shall afterwards intermarry, to apply for a rule to make the husband a party." The forty-eighth rule provides that the court may dispense with any particular rule if the adhering to it would prove a hardship to a suitor.

The fiftieth rule declares that "the court shall hold its sessions in four certain months in every year, for the hearing and determining of crimes and misdemeanors, and for the delivery of the gaols, or oftener, as occasion shall require; and the said months shall be February, May, August, and November, respectively."

#### CIRCUIT COURTS.

These courts are instituted by His Majesty's Order in Council, which the 9 Geo. 4, c. 83, s. 13, permitted to be issued. These courts are Courts of Record and stand in the same relation to the Supreme Court as Courts of Oyer and Terminer and of Assize and Nisi Prius in England stand in relation to the King's superior Courts of Record at Westminster.

#### *Vice-Admiralty Court.*

The Chief Justice is the judge of this court, and the commission investing him with the office gives him the power to hear and determine questions of salvage, disputes about seamen's wages, &c.; but does not authorize him to interfere in criminal cases, as the Supreme Court is empowered to take cognizance of offences committed in places where the admiral has jurisdiction.

#### *General and Quarter Sessions.*

The Courts of General and Quarter Sessions may take cognizance, in a summary way, of all crimes, misdemeanors, and other offences or misconduct not punishable by death, committed by convicts whose sentences have not expired, or have not been remitted; but persons not being convicts are tried according to the forms adopted in the Supreme Court.

They take cognizance of all matters and things that may be inquired of in Courts of General and Quarter

Sessions in England, so far as the circumstances and condition of the colony will permit.

### *Courts of Request.*

These courts are established under the authority of the 9 Geo. 4, c. 83, and are authorized to hear and determine, in a summary way, all actions, plaints, and suits for the payment or recovery of any debt, damages, or matter not exceeding £10 sterling, except the matter in question relates to the title to any lands, tenements, or hereditaments, or to the taking or demanding of any duty payable to His Majesty, or to any fee of office, annual rent, or other such matter where rights in future would be bound, or to any general right or duty, and to award costs. The decision of the court is final, and is carried into execution by attachment and sale of the goods and effects, or by corporal arrest. One commissioner presides in all the courts; he receives his appointment under the sign manual, with such salary as His Majesty shall direct.

### *The Archdeacon's Court.*

This court, which has jurisdiction in ecclesiastical affairs, is appointed by charter. This colony, as well as those of Van Dieman's Land and Swan River, is at present within the see of Calcutta, and is called the Australian Archdeaconry, there being one archdeacon appointed by His Majesty to superintend the spiritual concerns of the colonists. It does not appear, however, that the archdeacon has ever exercised any power except that of receiving the registers of births, though he has appointed a registrar, and has powers equal to those of the bishop whilst the bishop is absent from that part of his diocese. (9)

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(9) An Order in Council, issued on the 2d October, in the fifth year of the reign of Geo. 4th, appointed the Archdeacon and his successors a body corporate, to hold any property within the settlements, and to appear and defend suits in the courts as such. It also appointed the Archdeacon Commissary of the Bishop of Calcutta within the settlements, with power to

exercise jurisdiction in all ecclesiastical matters (excepting causes testamentary or matrimonial) according to the duty and functions of a Commissary by the ecclesiastical laws. As the Archdeacon has jurisdiction given him in his archdeaconry, the appointment of Commissary appears superfluous.—4 Inst. 338. Burn's Ecclesiastical Law, titles Chancellor, Commissary.

*Court of Appeals.*

From the decisions of the Supreme Court an appeal lies, (1) in all actions where the sum or matter at issue exceeds the value of £500, to the Governor or acting Governor for the time being, one or the other of whom (as the case may be) is directed from time to time to hold a court to be called "The Court of Appeals of the Colony of New South Wales;" and by a subsequent section of the act 4 Geo. 4, c. 96, it is further provided, "that it shall and may be lawful for His Majesty to allow any person or persons, feeling aggrieved by any judgment, decree, order, or sentence of the said Court of Appeals, to appeal therefrom to His Majesty in Council, in such manner, within such time, and under and subject to such rules, regulations, and limitations as His Majesty, by his charter and letters-patent, shall appoint and prescribe." It is provided also, that "in case it shall be made to appear to the satisfaction of the Judge of the Supreme Court that the judgment, decree, order, or sentence of the court may be of peculiar importance, or may affect directly or indirectly any claim, demand, or question to or respecting property, or any civil right amounting to or of the value of £500 sterling," an appeal shall be permitted to the said Court of Appeal, "although the sum or matter at issue, for or in respect of which such judgment, decree, order, or sentence shall or may be given, made, or pronounced, shall not amount to or be of the value of £500 sterling." And to encourage and promote the introduction and use of trial by jury in civil cases among the colonists, it is further provided, that "upon any appeal to be brought to the said Court of Appeals from any judgment of the said Supreme Court, founded upon the verdict of a jury of twelve men, the said Court of Appeals shall not reverse, alter, or inquire into the said judgment, except only for error of law apparent upon the record."

In case any judgment, decree, order, or sentence shall be pronounced by the Court of Appeals for or in respect of any sum or matter at issue above the value of £2000 sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, de-

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(1) Wentworth, 3d ed. p. 341.

mand or question to or respecting property, or any civil right amounting to or of the value of £2000 sterling, or in case the said Court of Appeals should reverse or vary any decision of the Supreme Court, the party feeling aggrieved by such decision may, within fourteen days next after the same shall have been pronounced, made or given, apply to the said Court of Appeals by petition for leave to appeal to the King in Council; and should the Court of Appeals think that the question in dispute ought to be referred to the King in Council, the execution is to be suspended, and the party feeling aggrieved is to find security for the due performance of the decision of the King in Council; but should the Court not think fit to stay execution, the party in whose favour the judgment is given is to enter into securities for the due performance of the decision of the King on the appeal. The Court of Appeals is also required to take security for costs from the appellant, and if such security is not given within three months from the date of such petition for leave to appeal, the Court of Appeals is not to allow the appeal. But if the party feeling aggrieved by the decision of the Court of Appeals shall not be able to comply with the above regulations or any regulations imposed by that court, he is not precluded from appealing, as the power is reserved to the King, on application by humble petition to His Majesty in Council, to allow such appeal: and in case the appeal shall be entertained by the King in Council, the Supreme Court is to conform to and execute or cause to be executed such judgments and orders as shall be made in the premises, in such manner as any original judgment, decree or decretal order, or other order or rule by the said Supreme Court of New South Wales would be executed.

#### TRIALS.

In criminal cases the jury consists of seven officers of the land or sea service appointed by the Governor, but when seven cannot be obtained, the number is made up with magistrates of the colony.(2)

(2) By the 9 Geo. 4, c. 83, s. 10, His Majesty is empowered to authorize the Governor to extend and apply the form of proceeding by grand and petit juries; and from some late

inquiries in the colony as to the policy of introducing those constitutional bodies into the courts, it is not improbable that the present deformed system will be shortly abolished.



Issues of fact are tried by a judge and two assessors, being magistrates, and liable to be challenged; but either plaintiff or defendant may apply for a trial by jury to the court, which has the power to grant or refuse the motion.

The assessors are appointed by the Governor, and they and the judge decide upon matters of fact.

It has been usual for the judge to require the assessors to receive the law upon the matter in dispute from him, and only to decide upon contested matters of fact; but in cases where the assessors have differed, the judge has also decided the matter of fact, that is to say, his vote upon the matter of fact has created a majority in the court.

#### *The Attorney-General.*

The Attorney-General is invested with the peculiar power of instituting proceedings of a criminal nature in the Supreme Court, or at the Courts of Quarter Sessions, as not only are all offences prosecuted by information in his name, but he has the power of finding or refusing the information, there being no grand jury. He is therefore to be considered in the light of a public prosecutor.

The Supreme Court, however, may allow any individual to exhibit a criminal information against any person or persons for any crime or misdemeanor not punishable with death, but even then the proceedings are conducted in the name of the Attorney-General.

#### *Judges, Barristers, &c.*

The act 9 Geo. 4, c. 83, allows His Majesty to appoint not more than three judges of the Supreme Court, and this number has been completed. The requisite qualification for a judge is, that he shall be a barrister in England or Ireland of not less than five years' standing, and he is appointed by His Majesty, but holds office only during pleasure.

In case however of the absence, resignation or death, or incapacity from disease or infirmity, of a judge, the Governor may appoint some person to act in his stead until the judge returns to his duties, or another appointment is made by the King.

The judges of the Supreme Court are authorized by the charter to admit and enrol such and so many persons

having been admitted barristers at law or advocates in Great Britain or Ireland, or having been admitted writers, attornies or solicitors in one of the courts of Westminster, Dublin or Edinburgh, or having been admitted as proctors in any ecclesiastical court in England, to act as well in the character of barristers and advocates as of proctors, attornies and solicitors in the said court.(3)

#### LAWS.(4)

Acts of parliament, as far as they can be applied to the present circumstances of the colony, are in force, and when any doubt arises as to their applicability, the Governor and Legislative Council decide the question,(5) if there is time to refer to them; but if not, the opinion of the judge presiding must guide the suitor.

The principal acts of parliament particularly relating to this colony and its dependencies, and now in force there, are the 54 Geo. 3, c. 15; 4 Geo. 4, c. 96; 5 Geo. 4, c. 84; 6 Geo. 4, c. 69; 9 Geo. 4, c. 83; and 2 & 3 Wm. 4, c. 69.

The 54 Geo. 3, c. 15, intituled "An Act for the more easy Recovery of Debts in His Majesty's Colonies of New South Wales," was passed with a view to enable traders in Great Britain to sue their debtors in the courts of the colony; it enacted, that in any suit or action depending

(3) A rule by the chief justice, dated March 7, 1829, requires that every person who shall intend to apply to be admitted an attorney or solicitor of the Supreme Court, shall for the space of one full term, previous to the term in which he shall apply to be admitted, cause his name, &c. to be affixed in the office of the Supreme Court, and to give notice of his intended application by advertisement in the newspapers. By a subsequent rule it is provided, that no person shall in future be admitted as an advocate unless he be one in Great Britain or Ireland; and that no persons shall be eligible to act as solicitors or attornies, unless admitted as solicitors, attornies, proctors, or writers to the signet, in some one or other of the King's Supreme Courts within the

United Kingdom of Great Britain or Ireland, or unless he has been articulated to some practising solicitor or attorney in New South Wales, and has served the term of five years, or unless he has duly served part of the five years of articleship in New South Wales, and the other part in England, or *vice versa*, or shall have served the term of five years as a clerk in the office of the Supreme Court. This latter rule, however, is not to come into operation until His Majesty's pleasure is known, it being repugnant to the charter.

(4) See ante, p. 3 to 16, upon the general topic how far the colonies are subject to the law of the mother-country.

(5) 9 Geo. 4, c. 83, s. 24.

“for or relating to any debt or account, wherein any person residing in Great Britain shall be a party, it shall and may be lawful to and for the plaintiff or defendant, and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing by affidavit or affidavits in writing upon oath, or in case the person making such affidavit be one of the people called Quakers, then upon his or her solemn assurance made before any mayor or other chief magistrate of the city, borough or town corporate in Great Britain,(6) where or near to which the person making such affidavit or affirmation shall reside, and certified and transmitted under the common seal of such city, borough, or town corporate, or the seal of the office of such mayor or other chief magistrate, which oath and solemn affirmation every such mayor and chief magistrate shall be and is hereby authorized and empowered to administer; and every affidavit or affirmation so made, certified and transmitted, shall in all actions and suits be allowed to be of the same force and effect as if the person or persons making the same upon oath or solemn affirmation as aforesaid had appeared and sworn or affirmed the matters contained in such affidavit or affirmation *vivá voce* in open court, or upon a commission issued for the examination of witnesses, or of any party in any such action or suit respectively: provided that in every such affidavit or affirmation there shall be expressed the addition of the party making such affidavit or affirmation, and the particular place of his abode.”

The second section of the same act permits, in any action or suit instituted by or on behalf of His Majesty in the colonial courts, the affidavits of witnesses to be used in the same manner that they may be used in actions by subjects; and the third section declares, that if any one shall wilfully swear or affirm anything that is false, he shall be deemed guilty of perjury.

The fourth section of the same act is one of great importance to creditors; it enacts, that houses, lands, and other hereditaments and real estates situate or being within the said colony of New South Wales or its de-

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(6) It will be observed that this act does not permit an affidavit to be sworn before the mayor or chief magistrate

of any city, borough or town corporate in Ireland.

pendencies belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands of what nature or kind soever, owing by any such person to His Majesty or any of his subjects, and shall and may be assets for the satisfaction thereof."

Convicts are now transported to these colonies under the authority given to His Majesty to appoint places to which felons may be sent by the 5 Geo. 4, c. 84, the 9th section of which act vests the property in their service in the Governor. In order to facilitate the proof of the conviction of convicts in the colonial courts, section 24 enacts, that the clerk of the court having the custody of the records of the court where the sentence or order of transportation has been passed or made, is to make out on request of any person on behalf of His Majesty, and give a certificate in writing, containing the effect and substance only of the indictment and conviction of the offender, and of the sentence or order of transportation; which certificate is evidence of the conviction and sentence or order of transportation.

By the 3d section 6 Geo. 4, c. 69, one or more justices may take cognizance of and punish convicts, whose sentences have not expired or been remitted, for any crime or misdemeanor not punishable with death, and may take cognizance of complaints made against such convicts for drunkenness, disobedience of orders, neglect of work, absconding or desertion, abusive language to their, his or her employers or overseers, insubordination or other turbulent or disorderly conduct, or for punishing such offences or any of them: provided that no such justice or justices shall exercise any such powers, authorities, or jurisdictions as aforesaid, in any case where any court of general or quarter sessions shall be appointed to be held within one week after the complaint shall be preferred against any such offender, at any place not more than twenty miles distant from the place at which the offence shall be charged to have been committed. The 4th section authorizes the Governor to transport from the colony any convict again convicted to places which he may appoint. (7)

By section 2, 2 & 3 Wm. 4, c. 62, it is enacted, "that

(7) Convicts re-convicted are sent from New South Wales to Norfolk Island, and from Van Diemen's Land to Port Arthur. See ante, p. 600, notes (1) and (2).

neither the Governor nor Lieutenant-Governor of any island, colony or settlement, nor any other person, shall give any pardon or ticket of leave to any person sentenced to transportation, or who shall receive a pardon on condition of transportation, or any order or permission to suspend or remit the labour of any such person, except in cases of illness, until such person, if transported for seven years, shall have served four; if transported for fourteen years, shall have served six; or if transported for life, shall have served eight years of labour; and that no such person shall be capable of acquiring or holding any property, or of bringing any action for the recovery of any property, until after such person shall have duly obtained a pardon from the Governor or Lieutenant-Governor of the colony or settlement in which he or she shall have been confined: provided that nothing herein contained shall in any manner affect His Majesty's royal prerogative of mercy."

#### ACTS PASSED BY THE COLONIAL COUNCIL.

Since the Legislative Council has been called together a great number of acts have been passed, but they chiefly relate to matters of police and revenue, there are however others deserving of consideration. The act passed in 1825, No. 21, entitled "An Act for better regulating and preserving parish and other Registers of Births, Baptisms, Marriages and Burials in New South Wales and its dependencies, including Van Diemen's Land," is one of importance: it enacts among other things, that after the 1st January, 1826, registers of baptisms, marriages and burials shall be kept by the officiating ministers of every parish in books of parchment or durable paper, and that copies of all entries shall be transmitted annually to the registrar of the Archdeacon's Court by the respective ministers of the different parishes.

The act passed in 1825, No. 22, entitled "An Act for registering Deeds and Conveyances in New South Wales, and for other purposes," is an act deserving of attention, as it requires all deeds, conveyances and other instruments (except leases for less than three years) to be registered in the office of the Supreme Court, and when registered to have priority according to the date of registration. The officer or clerk of the Supreme Court receiving a

memorial of any instrument for registration, is required to give a receipt for the same, specifying the day, hour and time of its delivery, and immediately to indorse on the back of such memorial the number and the time of its delivery into the office. Deeds by married women, made and executed in due form of law, and acknowledged before one of the judges of the Supreme Court in New South Wales, or if made in Great Britain or Ireland before a mayor or chief magistrate of any city, shall be valid, but memorials of such deeds are to be registered in the office of the Supreme Court.

An act passed in the year 1828, No. 6, authorizes the Governor or acting Governor to grant letters of denization,(8) which are to be recorded in the office of the Supreme Court, to such foreigners as may arrive in the colony with a recommendation to that effect from His Majesty's Principal Secretary of State for the colonies.

The act, No. 9, of the same year, "An Act for the better Regulation of Servants, Labourers and Work-people," provides, that if a servant who shall have entered into an agreement to work for a master, shall neglect or refuse to work, or shall absent himself from work, he may be brought before a magistrate, and on conviction shall be committed to the common gaol or house of correction for any time not exceeding six months or three months respectively, and shall forfeit all wages and pay. The second section of the act enacts, that every person employing a servant previously retained shall be fined not more than £20 nor less than £5; half of the fine to be paid to the person aggrieved, and the other half to the Benevolent Society. The third section provides, that servants spoiling, destroying or losing any property entrusted to them, shall pay double the value of such property, or be committed to gaol for any time not exceeding six nor less than one month. Upon proof of any ill-usage from any employer, magistrates are authorized by section 4 to order amends to the servant to the extent of six months' wages, and to cancel the agreement between them. If a party feels aggrieved by the decision of a magistrate, he may appeal to the next quarter sessions.(9)

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(8) There are also acts passed for naturalizing two foreigners.

(9) The 9 Geo. 4, c. 83, allows mechanics, artisans, agricultural la-

The acts relating to the press require a person having a printing-press and types to give notice thereof to the Colonial Secretary, under a penalty of £20; and printers to affix their names to every book or paper printed, under a penalty of £20. Newspaper editors, printers, proprietors, and publishers, are required to lodge an affidavit with the Colonial Secretary, stating their abode, &c., and to enter into recognizance with sureties to pay all penalties they may incur in cases of libel before they publish a number of the paper. Persons twice convicted of blasphemous or seditious libels to be banished the settlement.

The laws relating to convicts give magistrates power to punish them summarily, and allow them to be sent to penal settlements for various offences. A free person convicted of larcenies or other offences for which the law of England assigns transportation as the punishment, may be treated as a convict sent from England, and should he again offend, he may be sent to a penal settlement.

#### CHARTER OF JUSTICE—NEW SOUTH WALES.

13th October, 1823.

GEORGE the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas by an Act passed in the Fourth year of our reign, intituled "An Act to provide until the 1st day of July, 1827, and until the end of the next Session of Parliament, for the better Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto," it was enacted that it should be lawful for us, our heirs, or successors, by charters or letters-patent under the great seal of our United Kingdom of Great Britain and Ireland, to erect and establish Courts of Judicature in New South Wales and Van Diemen's Land respectively, which should be styled "The Supreme

hours and others, to execute in England agreements, (without stamps,) binding themselves to work for seven years in the colony for the person, his heirs or assigns, who shall convey them there. If mechanics, &c. should

not adhere to the agreement entered into in England when they arrive in the colony, they may be punished either under the colonial act or the 9 Geo. 4, c. 83.

Court of New South Wales," and "The Supreme Court of Van Diemen's Land;" and that each of such courts respectively should be holden by one judge or chief justice, and should have such ministerial or other officers as should be necessary for the administration of justice in the said courts respectively, and for the execution of the judgments, decrees, orders, and process thereof; and it was enacted that the said judges should from time to time be appointed by us, our heirs, and successors, and that the said ministerial and other officers of the said courts respectively should from time to time be appointed to and removed from their respective offices in such manner as we, our heirs, and successors should by such charters or letters-patent as aforesaid direct; and that the said judges should be respectively entitled to receive such reasonable salaries, as we, our heirs, and successors should approve and direct, which salaries should be in lieu of all fees or other emoluments whatsoever: Now know ye, that we, upon full consideration of the premises, and of our especial grace, certain knowledge, and mere motion, have, in pursuance of the said Act of Parliament, thought fit to grant, direct, ordain, and appoint, and by these presents do accordingly for us, our heirs, and successors grant, direct, ordain, and appoint that there shall be within that part of our colony of New South Wales situate in the Island of New Holland, a court, which shall be called a Supreme Court of New South Wales; and we do hereby create, direct, and constitute the said Supreme Court of New South Wales to be a court of record; and we do further will, ordain, and appoint that the said Supreme Court of New South Wales shall consist of and be holden by and before one judge, who shall be and be called the Chief Justice of the Supreme Court of New South Wales, which Chief Justice shall be a barrister in England or Ireland of not less than five years standing, to be named and appointed from time to time by us, our heirs, and successors, by letters-patent under our and their great seal of the United Kingdom of Great Britain and Ireland; and such Chief Justice shall hold his office during the pleasure of us, our heirs, and successors, and not otherwise: And we do hereby give and grant to our said Chief Justice rank and precedence above and before all our subjects whomsoever within the colony of New South Wales aforesaid, and the islands, territories, and places dependent thereupon, excepting the Governor or acting Governor for the time being of the said colony, and excepting all such persons as by law or usage take place in England before our Chief Justice of our Court of King's Bench: And we do further grant, ordain, and appoint that the said Supreme Court of New South Wales shall have and use, as occasion may require, a seal, bearing a device and impression of our royal arms within an exergue or label surrounding the same, with this impression, "The Seal of the Supreme Court of New South Wales;" and we do



hereby grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of the said Chief Justice: And we do further grant, ordain, and declare that the said Chief Justice, so long as he shall hold his office, shall be entitled to have and receive a salary of £2000 sterling by the year; and our Governor or acting Governor for the time being of the said colony is hereby directed and required to cause such salary to be paid to the said Chief Justice by four quarterly payments, at the four most usual days of payment in the year, in bills of exchange to be drawn by such Governor or acting Governor as aforesaid, on the Lords Commissioners of our Treasury in England, payable to or to the order of such Chief Justice, and which bills shall, by our said Governor or acting Governor, be accordingly delivered to the said Chief Justice: And we do further grant, ordain, and declare that the said salary shall commence and take place in respect to any person who shall be resident in Great Britain or Ireland at the time of his appointment, upon and from the day on which any such person shall thereupon embark or depart from Great Britain or Ireland for New South Wales, to take upon him the execution of the said office; and that the salary of any such Chief Justice who shall at the time of his appointment be resident in New South Wales aforesaid, shall commence and take place from and after his taking upon him the execution of such his office: and that such salary shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever, and that no fee of office, perquisite, emolument, or advantage whatsoever, other than and except the said salary, shall be accepted, received, or taken by such Chief Justice in any manner or on any account or pretence whatsoever: Provided nevertheless, that it shall be lawful for the said Chief Justice to occupy and inhabit any official house or residence within the said colony of New South Wales which hath been or may hereafter be provided for his residence and occupation, without paying to us, our heirs, and successors any rent for the same, and without being obliged to repair, uphold, or maintain any such house or official residence at his own costs and charges: And we do further grant, appoint, and declare that no Chief Justice of the said Supreme Court of New South Wales shall be capable of accepting, taking, or performing any other office or place of profit or emolument, on pain that the acceptance of any such other office or place as aforesaid, shall be and be deemed in law *de facto* an avoidance of his office of Chief Justice, and the salary thereof shall cease and be deemed to have ceased accordingly from the time of such acceptance of any such other office or place: And we do hereby constitute and appoint our trusty and well-beloved Francis Forbes, esquire, to be the first Chief Justice of the said Supreme Court of New South Wales, the said Francis Forbes being a barrister in England of five years' standing and upwards: And we do hereby ordain, appoint, and declare that there

shall be and belong to the said court the following officers, that is to say, a Registrar, a Prothonotary, a Master and Keeper of Records, and such and so many officers as to the Chief Justice of the said court for the time being shall from time to time appear to be necessary for the administration of justice, and the due execution of all the powers and authorities which are granted and committed to the said court by these our letters-patent: Provided nevertheless, that no new office shall be created in the said court, unless the Governor or acting Governor for the time being of our said colony shall first signify his approbation thereof to our said Chief Justice for the time being, in writing, under the hand of such Governor or acting Governor as aforesaid: And we do further ordain and direct that all persons who shall and may be appointed to the several offices of Master, Registrar, Prothonotary or Keeper of Records of the said Supreme Court of New South Wales, or to any offices in the said court, whereof the duties shall correspond to those performed by the Master, Registrar, Prothonotary, or Keeper of Records of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs, and successors, by warrant under our or their royal sign manual; and that all persons who shall and may be appointed to any other office within the said Supreme Court of New South Wales, shall be so appointed by the Chief Justice for the time being of the said court. And we do further direct and appoint that the several officers of the said court so to be appointed as aforesaid by us, our heirs, and successors, shall hold their respective offices during our and their pleasure; and that the several officers of the said court so to be appointed as aforesaid by the Chief Justice thereof, be subject to be removed by the said court from their offices therein upon reasonable cause: And we do hereby authorize and empower the said Supreme Court of New South Wales to approve, admit, and enrol such and so many persons having been admitted barristers at law or advocates, in Great Britain or Ireland, or having been admitted writers, attornies, or solicitors in one of our courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any Ecclesiastical Court in England, to act as well in the character of barristers and advocates, as of proctors, attornies, and solicitors in the said court; and which persons, so approved, admitted, and enrolled as aforesaid, shall be and are hereby authorized to appear and plead and act for the suitors of the said court, subject always to be removed by the said court from their station therein, upon reasonable cause; and we do declare that no person or persons whatsoever shall be allowed to appear and plead, or act in the said Supreme Court of New South Wales, for and on behalf of such suitors, or any of them: Provided always, and we do ordain and declare that in case there shall not be a sufficient number of such barristers-at-law, advocates, writers, attornies, solicitors, and proctors within the said colony,

competent and willing to appear and act for the suitors of the said court, then and in that case the said Supreme Court of New South Wales shall and is hereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attorneys, and solicitors, as may be necessary, according to such general rules and qualifications as the said court shall for that purpose make and establish: Provided, that the said court shall not admit any person to act in any or either of the characters aforesaid, who hath been by due course of law convicted of any crime, which, according to any law now in force in England would disqualify him from appearing and acting in any of our Courts of Record at Westminster. And we do hereby ordain and declare that the Governor or acting Governor for the time being of the said colony of New South Wales shall yearly, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as and be the sheriff for our said colony of New South Wales and its dependencies, other than and except the Island of Van Diemen's Land, for the year ensuing, which sheriff when appointed shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath faithfully to execute his office, and the oath of allegiance, before the Governor or acting Governor, who are hereby authorized to administer the same; and such sheriff shall continue in such his office during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such sheriff shall die in his office, or depart from our said colony of New South Wales, then another person shall, as soon as conveniently may be after the death or departure of such sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another sheriff shall be duly appointed and sworn into the said office: And we do further order, direct, and appoint that the said sheriff and his successors shall by themselves, or their sufficient deputies to be by them appointed and duly authorized under their respective hands and seals, and for whom he and they shall be responsible during his or their continuance in such office, execute, and the said sheriff and his said deputies are hereby authorized to execute all the writs, summonses, rules, orders, warrants, commands, and process of the said Supreme Court of New South Wales, and make return of the same, together with the manner of the execution thereof, to the Supreme Court of New South Wales, and to receive and detain in prison all such persons as shall be committed to the custody of such sheriff by the said Supreme Court of New South Wales, or by the chief justice of the said court: And we do further authorize our Governor or acting Governor for the time being of the said colony of New South Wales, to

re-appoint the same person to fill the office of sheriff from year to year, if it shall appear to our said Governor or acting Governor expedient so to do; so nevertheless as that such appointment shall be annually renewed and be not ever made for more than one year: Provided nevertheless, and we do hereby require our said Governor or acting Governor of our said colony, in the selection of any person or persons to fill the said office of Sheriff of New South Wales, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs, and successors, through one of our or their principal Secretaries of State: And we do further direct, ordain, and appoint, that whenever the said Supreme Court of New South Wales shall direct or award any process against the said sheriff, or award any process in any cause, matter, or thing wherein the said sheriff, on account of his being related to the parties or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot or ought not by law to execute the same, in every such case the said Supreme Court of New South Wales shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court: Provided always, and we do hereby ordain and declare, that the said Supreme Court of New South Wales shall fix certain limits beyond which the said sheriff shall not be compelled or compellable to go in person, or by his officers or deputies, for the execution of any process of the said court; and when the process of the said court shall be to be executed in any place or places beyond the limits so to be fixed, we grant, ordain, and direct that the said Supreme Court of New South Wales shall, upon motion, direct by what person or persons, and in what manner such process shall be executed, and the terms and conditions which the party at whose instance the same shall be issued shall enter into, in order to prevent any improper use or abuse of the process of the said court, and the said sheriff shall and he is hereby required to grant his special warrant or deputation to such person or persons as the said court shall direct for the execution of such process; and in that case we direct and declare that the said sheriff, his executor, and administrators, shall not be responsible or liable for any act to be done in or in any way respecting the execution of such process, under and by virtue of such special warrant, and that any person or persons being aggrieved under or by pretence of such special warrant, shall and may seek their remedy under any security which may have been directed to be taken upon the occasion, and which the said court is hereby authorized to direct to be taken. And whereas in the said Act of Parliament it is enacted, that the said courts shall have cognizance of all pleas, civil, criminal or mixed, and the jurisdiction of

the said courts in all such cases is thereby settled and ascertained ; and it is thereby enacted, that the said courts shall be courts of ecclesiastical jurisdiction, and shall have full power and authority to administer and execute within New South Wales and Van Diemen's Land and the dependencies thereof, such ecclesiastical jurisdiction and authority as shall be committed to the said Supreme Courts by our charters or letters-patent: Now we do hereby for us, our heirs and successors, grant, ordain, establish and appoint, that the said Supreme Court of New South Wales shall be a court of ecclesiastical jurisdiction, with full power to grant probates, under the seal of the said court, of the last wills and testaments of all or any of the inhabitants of that part of the said colony and its dependencies situate in the island of New Holland, and of all other persons who shall die and leave personal effects within that part of the said colony, and to commit letters of administration under the seal of the said court of the goods, chattels, credits, and all other effects whatsoever of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within that part of the said colony and its dependencies ; or where the executor being duly cited shall not appear and sue forth such probate, annexing the will to the said letters of administration, when such persons shall have left a will without naming any executor or any person for executor, who shall then be alive and resident within that part of the said colony and its dependencies, and who being duly cited thereunto will appear and sue forth a probate thereof, and to sequester the goods and chattels, credits and other effects whatsoever of such persons so dying; in cases allowed by law, as the same is and may be now used in the diocese of London ; and to demand, require, take, hear, examine, and allow, and, if occasion require, to disallow and reject, the accounts of them in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf: Provided always, and we do hereby authorize and require the said court in such cases as aforesaid, where letters of administration shall be committed with the will annexed, for want of an executor applying in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same. And we do hereby further authorize and require the said Supreme Court of New South Wales to grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within the jurisdiction of the said court, and being of the age of twenty-one years, and in case no such person shall then be residing within the jurisdiction of the said court, or being duly cited shall not appear and pray the

same, to the registrar of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the court shall see fit: Provided always, that probates of wills and letters of administration to be granted by the said court, shall be limited to such money, goods, chattels and effects as the deceased person shall be entitled to within that part of the said colony situate within the island of New Holland: and we do hereby further enjoin and require that every person to whom such letters of administration shall be committed, shall before the granting thereof give sufficient security by bond, to be entered into to us, our heirs and successors, for the payment of a competent sum of money, with one, two or more able sureties, respect being had to the sum therein to be contained, and in the ability of the sureties, to the value of the estates, credits and effects of the deceased, which bond shall be deposited in the said court among the records thereof and there safely kept, and a copy thereof shall also be recorded among the proceedings of the said court; and the condition of the said bond shall be to the following effect:—“That if the above bounden administrator of the goods, chattels and effects of the deceased do make or cause to be made a true and perfect inventory of all and singular the goods, credits and effects of the said deceased, which have or shall come to the hands, possession or knowledge of him the said administrator, or to the hands or possession of any other person or persons for him; and the same so made do exhibit or cause to be exhibited into the said Supreme Court of New South Wales, at or before a day therein to be specified, and the same goods, chattels, credits and effects, and all other the goods, chattels, credits and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make or cause to be made a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she or they shall be lawfully required, and all the rest and residue of the said goods, chattels, credits and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said Supreme Court of New South Wales, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of none effect, or else to be and remain in full force and virtue;” and in case it shall be necessary to put the said bond in suit, for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said court to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said

suit or any part thereof, such person or persons shall by order of the said court be allowed to sue the same in the name of the Attorney-General for the time being of the said colony, and the said bond shall not be sued in any other manner; and we do hereby authorize and empower the said court to order that the said bond shall be put in suit in the name of the said Attorney-General. And we do further will, order and require, that the said court shall affix certain periods when all persons to whom probates of wills and letters of administration shall be granted by the said court, shall from time to time, until the effects of the deceased person shall be fully administered, pass their accounts relating thereto before the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said court, then, or at any earlier time, if the said court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted, shall pay, deposit and dispose of the balance of money belonging to the estate of the deceased then in his, her or their hands, and all money which shall afterwards come into his, her or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, in such manner and unto such persons as the said court shall direct for safe custody; and we require that the said court shall from time to time make such order as shall be just for the due administration of such assets and for the payment or remittance thereof or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said colony and its dependencies, who may be entitled thereto or any part thereof as creditors, legatees or next of kin, or by any other right or title whatsoever. And we further order and direct, that it shall be lawful for the said court to allow to any executor or administrator of the effects of any deceased person (except as herein mentioned) such commission or per centage out of their assets as shall be just and reasonable for their pains and trouble therein: Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time or to dispose of any money, goods, chattels or securities with which he shall be chargeable, in such manner as in pursuance of any general or special rule or order of the said court shall be requisite; and moreover every such executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels or securities with which he shall be chargeable, shall be charged with interest at the rate then current within the said colony and its dependencies for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof. And we do hereby authorize the said Supreme Court of New South Wales to appoint guardians and keepers of infants and their

estates according to the order and course observed in that part of our United Kingdom called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves and their estates, which we hereby authorize and empower the said court to inquire, hear and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known. And whereas it is by the said act enacted, "that it shall and may be lawful for us by our said charters or letters-patent respectively to allow any person or persons feeling aggrieved by any judgment, decree, order or sentence of the Court of Appeals of the colony of New South Wales, to appeal therefrom to us in our Privy Council, in such manner, within such time, and under and subject to such rules, regulations and limitations as we by any such charters or letters-patent respectively should appoint and prescribe: Now we do hereby direct, establish and ordain, that any person or persons may appeal to us, our heirs and successors, in our or their Privy Council in such manner, within such time, and under and subject to such rules, regulations and limitations as are hereinafter mentioned, (that is to say,) in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £2000 sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand or question to or respecting property or any civil right, amounting to or of the value of £2000 sterling, or in case the said Court of Appeals should by any such judgment, decree, order, or sentence reverse, alter or vary any judgment, decree, order or sentence of the said Supreme Court of New South Wales, the person or persons feeling aggrieved by any such judgment, decree, order or sentence of the said Court of Appeals, may, within fourteen days next after the same shall have been pronounced, made or given, apply to the said Court of Appeals by petition for leave to appeal therefrom to us, our heirs and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money, or perform any duty, the said Court of Appeals shall and is hereby empowered either to direct that the judgment, decree, order or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear to be most consistent with real and substantial justice; and in case the said Court of Appeal shall direct such judgment, decree, order or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Court of



Appeals, for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon; or in case the said Court of Appeals shall direct the execution of any such judgment, decree, order or sentence to be suspended pending the appeal, the person or persons against whom the same shall have been given, shall in like manner and before any order for the suspension of any such execution is made, enter into good and sufficient security to the said Court of Appeals for the due performance of such judgment or order as we, our heirs or successors, shall think fit to make thereupon; and in all cases we will and require that security shall also be given by the party or parties appellant to the satisfaction of the said Court of Appeals, for the prosecution of the appeal and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then, and not otherwise, the said Court of Appeals shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her or their appeal to us, our heirs and successors, in our or their Privy Council in such manner and under such rules as are observed in appeals made to us from our plantations or colonies: and we do hereby reserve to ourself, our heirs and successors, in our or their Privy Council, full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said Court of Appeals, to refuse or admit his, her or their appeal therefrom, upon such terms and upon such limitations, restrictions and regulations as we or they shall think fit, and to reverse, correct or vary such judgment or determination as to us or them shall seem meet: and it is our further will and pleasure, that in all cases of appeal allowed by the said Court of Appeals, or by us, our heirs or successors, the said Court of Appeals shall certify and transmit to us, our heirs or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees and orders had or made in such causes appealed from, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court. And we do further direct and ordain, that the said Supreme Court of New South Wales shall in all cases of appeal to us, our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as we shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or other order or rule by the said Supreme Court of New South Wales, should or might have been executed: and we do hereby strictly charge and command all governors, commanders, magistrates, ministers, civil and military, and all our liege subjects within and belonging to the said colony, that in the execution of the several powers, jurisdic-

tions and authorities hereby granted, made, given or created, they be aiding and assisting, and obedient in all things, as they will answer the contrary at their peril: Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend to prevent us, our heirs and successors, to repeal these presents or any part thereof, or to make such further or other provision by letters-patent for the administration of justice, civil and criminal, within the said colony and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner as if these presents had not been made, these presents or anything herein contained to the contrary thereof in anywise notwithstanding. In witness, &c., the 13th day of October.

By Writ of Privy Seal.

Examined with the Record in the Petty Bag Office in the Court of Chancery, the 22d day of April, 1834.

J. BENTALL.

## VAN DIEMEN'S LAND.

VAN DIEMEN'S LAND, or Tasmania, as the settlers call it, is an island situated between the parallels of 40° and 44° south latitude, and 144° and 149° east longitude. In extent from north to south it is about 210 miles, and from east to west about 150, containing a superficies of nearly 23,437 square miles, or 14,999,680 square acres, only one-half of which is supposed to be capable of being brought into cultivation, but at present not above 60,000 acres(1) have been subjected to the plough. It is bounded by the ocean on three sides, and on the fourth by a channel, called Bass' Straits, which separates it from New Holland, and in which there are several small islands. The climate is fine and salubrious, the extremes of heat and cold being unknown. The principal towns are Hobart Town, frequently called Hobarton, and Launceston, both of which are free warehousing ports. The chief articles exported are bark for tanning, oil, train and sperm, timber, whale fins, sheeps' wool, skins, corn, and potatoes.

### HISTORY.

Tasman, the Dutch navigator, discovered this island in 1642, and called it Van Diemen's Land, in honour of the then Governor-General of the Dutch East Indies. From that time down to 1773, when Captain Cook anchored there, only two or three navigators had visited it, and they all supposed it to be part of New Holland.

Mr. Bass, a surgeon in the royal navy, discovered, in an expedition that he undertook in an open boat, the channel called Bass' Straits, and Captain Flinders and Mr. Bass subsequently, in 1798, sailed through the strait

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(1) Parker's Van Diemen's Land, p. 123.

and round the island in a small decked sloop. This expedition satisfactorily determined the geographical position of the country.

In 1803 the first settlement was formed on the banks of the Derwent, and was called Risdon. The persons who founded it were a small detachment of soldiers, under the command of Lieutenant Bowen, and a party of convicts, persons who had been transported from England to New South Wales, and had there committed crimes, for which they were to be punished by being sent to a penal settlement of a lower grade. In 1801 Lieutenant-Governor Collins, who had recently left England with a considerable party, having in view the formation of a settlement at Port Phillip, on the southern coast of New Holland, and had altered his destination, after ascertaining the *unfitness of that port for his object*, arrived in the Derwent, and took the command. Shortly after he had taken upon himself the administration of affairs, he removed the settlers from Risdon to the present site of Hobart Town, which is now the seat of government. In the same year a settlement was also effected by Colonel Patterson at Port Dalrymple, and then the island was divided into two counties, Buckinghamshire and Cornwall. Until 1813 no vessels were allowed to enter the harbours or ports, as the settlement was only considered a place of punishment for the re-convicted felons of the colony at New South Wales. It was about this period that the offence of bush-ranging first became prevalent, and it afterwards grew to such an alarming height, that it was not until military law was declared and put in force that it was suppressed.

Previous to the year 1816 no civil court was held, but in the month of January in that year the Lieutenant-Governor's Court, composed of a judge-advocate<sup>(2)</sup> and two inhabitants of the settlement, was opened for the trial of civil causes, not exceeding in amount the sum of £50: suits for a larger amount were, as all actions before had been, instituted in the Supreme Court at Sydney; and it was in consequence of the increasing number and importance of those suits that the Judge of the Supreme Court in January, 1819, went to Hobart Town

(2) The Judge-Advocate admitted persons to practise in this court who

had not received a legal education, and these were called practitioners.

and there held a sitting. The next sitting was held in the year 1821, and the Judge of the Supreme Court was then accompanied by the Judge-advocate, who, for the first time, opened a criminal court.

Up to that period all offences committed by convicts, excepting murder, had been punished by a bench of magistrates, at monthly meetings, held at Hobart Town, but the punishments the bench inflicted were necessarily often too lenient; for heinous offences transportation to the Coal River for three and five years, with condemnation to work there in chains, was the usual sentence, and for lesser crimes flogging, to the amount of 300 lashes. The investigation of offences committed by free people was referred to the Criminal Court at Sydney; and such was the reluctance of the settlers to quit their property to carry on prosecutions, and to incur the expense, trouble and delay necessarily attendant upon a long voyage, that compromises of crimes of the blackest kind were frequently effected.

In the year 1819 the attention of emigrants was called to the advantages the island presented, and since that time the tide of emigration has set in so very steadily to its shores, that the population, which then did not amount to 6000 souls, now exceeds 35,000.(3)

The 4 Geo. 4, c. 96, placed the colony in a much higher situation than it had previously stood; it established a court of justice having criminal, civil, equitable, and, to a certain extent, ecclesiastical jurisdiction, called "The Supreme Court of Van Diemen's Land." This court was also authorized to proceed by process of *foreign attachment* against the effects of debtors absent from the colony, and to declare insolvencies, and to distribute the effects of insolvent persons in Van Diemen's Land. Courts of Quarter Sessions and Courts of Requests were also instituted by the powers given to the Governor by the same act.

In the year 1825 a proclamation was issued, declaring Van Diemen's Land to be independent of New South Wales, and thereupon the Lieutenant-Governor assumed the powers of Governor, and an Executive Council, con-

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(3) The population consisted, as taken at the general muster or census in 1821, of 7185 souls, of whom 3246

were free persons, and 3939 were convicts. Wentworth, 2d ed. p. 55.

sisting of the Lieutenant-Governor, Chief Justice, Colonial Secretary, Colonial Treasurer, and the principal (acting) military officer was appointed; and a Legislative Council, consisting of seven persons nominated by His Majesty, was called together for the purpose of making laws for the government of the colony.

The 9 Geo. 4, c. 83, relates to this island as well as to New South Wales, and therefore the civil and judicial establishments do not differ in any material degree from those of the parent-colony.

#### CIVIL GOVERNMENT.

The officer who controls the affairs of this colony is only a Lieutenant-Governor, but he has all the authority of a governor when the Governor of New South Wales, who is the Captain-General and Governor-in-Chief of Van Diemen's Land, (4) is not present in the island.

The Lieutenant-Governor is the head of the Executive Council, and he is required to consult with the members upon all matters of moment, but he is not bound to adopt the opinions the majority express; though, should he differ from them, and act contrary to their advice, he must transmit his reasons for having so acted to the Secretary of State for the colonies. The Executive Council consists at present of the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, the Colonial Treasurer, and Lieutenant-Colonel Logan. (5)

The Legislative Council consists of not more than fifteen members, nor less than ten, appointed by the King's warrant. Several of the members, such as the Chief Justice, Colonial Chaplain, Attorney-General, Treasurer, and Secretary are members *ex officio*. The duties of the Legislative Council, (6) as well as the mode enjoined of conducting business, are these:—

1. The members are to make laws and ordinances for the peace, welfare, and good government of the colony,

(4) See ante, p. 606 and note (6).

(5) This gentleman is the senior officer of the military force stationed in the island, but as the 63d regiment, of which he is colonel, is about to be removed, it is probable

that his successor will be the colonel of the next regiment which shall be sent there. This is usually the case in other colonies.

(6) Van Diemen's Land Almanack for 1833, p. 66.

such laws not being repugnant to the laws of England.(7) No law shall be passed, unless the same shall first be laid by the Governor before the Council, nor unless notice of the general objects of it shall have been sent by the Governor to one or more of the newspapers for insertion, eight clear days at least before such law shall be passed, or unless, in case there be no newspapers, such notice shall be given by some mode of public advertisement;(8) except when the Governor shall consider that actual danger will arise from the delay of eight days, in which case the bill may be passed on the emergency into a law. The Council is not competent to act unless two-thirds of the members, exclusive of the Governor or presiding member, be present; and if a majority of the members present dissent from any bill brought in by the Governor, they may enter the grounds of their dissent against the bill on the minutes of the Council, and then it cannot become a law. In case the Governor, on the request of any member, shall refuse to lay any bill or proposal for a law before the Council, he shall, on a similar request, lay before the Council a copy of his refusal, with a copy of the bill so refused recited verbatim; and any member disapproving of such refusal, may enter upon the minutes the grounds of his disapprobation.

2. Every law shall be transmitted, within seven days from the day it is passed through the Legislative Council, to the Supreme Court to be enrolled, and after fourteen days from the date of such enrolment it comes into operation, unless the judges of the Supreme Court shall represent to the Governor that such law is repugnant to the 9 Geo. 4, c. 83, to the laws of England, to charters or to letters-patent; the Governor shall then suspend such law until he has brought it, together with the representation, under the review of the Council; and if upon such review the Governor and Council cannot see the force of the judge's representation, and shall adhere to the proposed law, a written notice of such resolution shall be transmitted by the Governor to the judges, and such law shall take effect and be binding until His Majesty's pleasure be known, any repugnancy or supposed repugnancy notwithstanding.(9)

(7) 9 Geo. 4, c. 83, s. 20 and 21.

(8) Sect. 21.

(9) A difference of opinion as to

the repugnancy of a law exists at the present time in Van Diemen's Land, the judges having represented the 61st

3. The Governor shall preside and vote at the sittings of the Council, and when the votes are equally divided, he shall have an additional or casting vote.

4. The laws of England, as far as they can be applied, shall be recognized in the administration of justice; and when a doubt arises, the Governor and Council shall decide whether or not any statute extends to the colony, and shall make such limitations and modifications as may be deemed expedient. (1)

5. The Governor and Council shall not impose taxes but for local purposes. (2)

6. Every law passed by the Council must be transmitted by the Governor, within six months from the time of its passing, to one of His Majesty's Principal Secretaries of State. (3)

7. All laws made in the colony, and all orders by His

section of "An Act for regulating the police in the town and ports of Hobart Town and Launceston, and for removing and preventing nuisances and obstructions therein," to be repugnant to the law of England, in so far as it renders liable to apprehension and detention in a watch-house any mariners, however peaceable and orderly, who may be found in a public-house, or in a street, or public place after the hour of nine at night and before sun-rise. The judges in their opinion stated, "that an enactment restrictive of the liberty which the law of England allows to the subject, or which deprives him of those safeguards for his liberty which the law itself has provided, and which it carefully maintains, must be held to be repugnant to the law itself, unless called for by some necessity or expediency." The Governor placed the representations of the judges before the Council, but recommended the members to adhere to the law, observing that he should be able to show them that it was expedient. "The discipline of the convicts," he says, "requires that they should, as much as possible, be deterred from ever even attempting to escape from the territory, which of course can only be accomplished by water; and it is matter of fact, of which I have been

assured by the Police Magistrate, that these men, when endeavouring to get on board of vessels for the purpose of concealment, are generally dressed as mariners; it is therefore most important that the constables should always be enabled to distinguish between sailors and convicts in disguise as such."

Captain Forster, the Chief Police Magistrate, says, "I was glad to find the clause in the bill, knowing that similar restrictions to those imposed by the said section are in force in Europe." With due deference to Colonel Arthur and to Captain Forster, the case of expediency is one for an enactment against the convicts, and not against the sailors. The knowledge of similar restrictions may refer to the Peninsula or perhaps France, where probably the gallant Captain served during the wars, but not to Great Britain or Ireland. The Captain may, however, have mistaken the regulations of a garrison for an act of parliament, for there can be no doubt that any person or any particular class of persons may be excluded from a garrison at any hour either of the day or night. This however would not justify the enactment.

(1) 9 Geo. 4, c. 83, s. 24.

(2) Sect. 25.

(3) Sect. 28.



Majesty in pursuance of the 9 Geo. 4, c. 83, shall be laid before both Houses of Parliament within six weeks after the commencement of each session.(4)

8. The members of the Council are justices of the peace by virtue of their office, and take the following oath, viz.:—"I do swear that I will, to the best of my judgment and ability, faithfully advise and assist the Governor of the Colony of Van Diemen's Land and its dependencies in all such matters as shall be brought under my consideration as member of the Council of the said colony. So help me God."(5)

9. In the case of death or resignation of a member of Council, the Governor may appoint some person to act in his stead until His Majesty's pleasure be known.(6)

The Governor and Council are empowered to raise a revenue by taxation, but the particular local object to which the money to be raised by every impost is to be applied, must be specified by the act of the Council directing it to be levied.(7)

#### COURTS.

##### *The Supreme Court.*

The 4 Geo. 4, c. 96, was the first act of parliament authorizing His Majesty to issue letters-patent instituting a Supreme Court in Van Diemen's Land, and under the authority of that act a charter of justice passed the great seal, bearing date 13th October, 1823; it became necessary, however, after Van Diemen's Land was declared an independent colony, and after the 9 Geo. 4,

(4) 9 Geo. 4, c. 83, s. 29.

(5) Sect. 30.

(6) Sect. 31.

(7) Sect. 25. The next section makes perpetual the 59 Geo. 3, c. 114, and the 3 Geo. 4, c. 96, authorizing the imposition of duties upon importation, not exceeding 10s. a gallon on spirits, the produce and manufacture of the United Kingdom or the British West Indies; not exceeding 15s. a gallon on all other spirits; not exceeding 4s. per lb. on tobacco, and not exceeding £15 per cent. on goods, wares and merchandise, not being the growth, produce or manufacture of

the United Kingdom. These duties are not exacted to the full extent, as the subjoined account of the duties now levied will show:—on brandy, per gallon, 10s.; Hollands or Geneva, 10s.; on rum, the produce of the West Indian colonies, 7s. 6d.; on British gin, 7s. 6d.; and tobacco per lb. 1s. 6d.; on all merchandise of foreign produce or manufacture, an *ad valorem* duty of £5 per cent. on importation, with the exception of wine, which is subjected to a duty of £15 per cent. Goods of British manufacture are not liable to any duty.

c. 83, came into operation, that a new charter should issue, and accordingly on the 4th March, 1831, a charter of justice, adapted to the new condition of the colony, was published.

The Supreme Court is presided over by two judges, who must be barristers of five years' standing.(8) Its jurisdiction is as extensive within the colony and its dependencies as that of the Courts of King's Bench, Common Pleas, and Exchequer in England; and it has besides the power to proceed by foreign attachment in certain cases where the sheriff has returned *non est inventus*.(9) Issues of fact are triable before one of the judges and two assessors, magistrates of the colony, appointed to this duty by the Governor. The assessors are liable to be challenged on behalf of either plaintiff or defendant, but reasons for challenge are to be assigned, and the judge is to determine whether they are sufficient. If the assessors do not agree on a verdict, the judge has the casting vote. Parties are not entirely precluded, however, from having their cause tried before a jury, as the court, on the application of either plaintiff or defendant, may order a jury to be summoned.

This court is also a criminal court for the trial of treasons, murders, felonies and misdemeanours committed within the island and its dependencies, as also within the jurisdiction of the Vice-Admiral, and for the trial of offences, committed by British subjects belonging to British ships, in the islands of Otahaite, New Zealand, and in those of the Indian and Pacific Oceans.(1) Criminal offences are prosecuted by information at the instance and in the name of the Attorney-General of the colony, and are tried by seven military or naval officers as a jury; but if seven officers cannot be obtained, the number may be completed with magistrates.(2) The 10th section of the 9 Geo. 4, c. 83, authorizes the King to extend and apply the form of proceeding by grand and petit juries.

An act of the Legislative Council passed in the early part of this year (1834), has given the Judges of the Supreme Court the power to declare insolvencies, and to distribute the effects of insolvents.

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(8) 9 Geo. 4, c. 83, s. 16, allows the judges to make rules of practice, but there are no copies of these rules in England.

(9) 4 Geo. 4, c. 96, s. 9.

(1) See ante, p. 610 and note (6).

(2) See ante, p. 621.

This court also possesses equitable and ecclesiastical jurisdiction of the same extent as the Supreme Court of New South Wales.(3)

An appeal from the decision of this court is not to the Governor, as in the instance of the Supreme Court of New South Wales, but direct to the King in Council; it lies in cases where any judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £1000 sterling, or shall involve directly or indirectly any claim, demand or question to or respecting property or any civil right amounting to or of the value of £1000.(4)

#### *Circuit Courts.*

These courts have been instituted by an Order in Council, issued pursuant to the provisions of the 9 Geo. 4, c. 8, s. 13. They are Courts of Oyer and Terminer and Gaol Delivery, and of assize and nisi prius. Sittings are occasionally held at Launceston by one of the judges of the Supreme Court.

#### *Courts of Quarter Sessions.*

These courts derive their authority from an act of the Legislative Council passed in the year 1830. They form courts of appeal from decisions of magistrates in certain cases, and are empowered to try all offences not punishable with death.(5) They also have special juris-

(3) See ante, pp. 608, 611, and the charter of justice, post, 653. This colony is within the diocese of Calcutta and archdeaconry of New South Wales. A Rural Dean has lately been appointed to reside in the colony, but he has not power to hold courts, or any special delegation such as was formerly committed to rural deans.--See Burn's Ecclesiastical Law, title Deans and Chapter; Gibs. 971; 1 Warner's Eccle. Hist. 275. The office of the Rural Dean of Van Diemen's Land appears to be limited to the inspection of the lives and manners of the clergy and people within his district. In the Provincial Synod of Convocation held at London, April

3, 1571, it was ordained, that "the archdeacon, when he hath finished his visitation, shall signify to the bishop what clergymen he hath found in every deanery so well endowed with learning and judgment as to be worthy to instruct the people in sermons, and to rule and preside over others: out of these the bishop may choose such as he will have to be rural deans." Kenw. 652, 653; Gods. App. 7. In England little remains of this dignity.

(4) The mode of proceeding on appeal resembles that of other colonies, and is stated at length in the charter of justice, for which see post, 653.

(5) See 9 Geo. 4, c. 83, s. 17.

diction given to them by 6 Geo. 4, c. 69, in offences committed by convicts. (6)

### *Courts of Requests.*

There are seven Courts of Request for the recovery of debts not exceeding £10. They are constituted by the Lieutenant-Governor, who is authorized by an act of the Legislative Council to appoint one court for each of the several police districts into which the located part of the colony is divided. (7)

### *The Attorney-General.*

This officer is invested with the power of a grand jury, as it is to him that bills, or rather informations, are presented, and he either rejects or finds them. All prosecutions are carried on as informations at his instance.

### *Barristers and Attornies.*

The Judges of the Supreme Court are empowered to admit persons, being barristers or advocates in Great Britain or Ireland, or being writers, attornies or solicitors in one of the Courts at Westminster, Dublin or Edinburgh, or being proctors in any ecclesiastical court in England, to act as well in the character of barristers and advocates as of proctors, attornies and solicitors. (8)

### LAWS. (9)

The laws of England are recognized, as far as the circumstances of the colony will allow, by the judges of their various courts, and when a question arises as to the applicability of any act of parliament, the Lieutenant-Governor and Legislative Council decide it, if it can be referred to them; but if not, the judge determines whether or not the circumstances of the colony will admit of its introduction.

The principal acts of the Imperial Parliament (1) speci-

(6) See ante, p. 624.

(7) See 9 Geo. 4, c. 83, s. 18.

(8) See ante, p. 622, note (3).

(9) See ante, p. 3 to 16, on the topic how far the colonies are subject

to the law of the mother-country.

(1) Acts relating to our colonial possessions generally, are referred to in the summary, ante.

fically relating to this colony and its dependencies, and now in force, are the 54 Geo. 3, c. 15; 4 Geo. 4, c. 96; 5 Geo. 4, c. 84; 6 Geo. 4, c. 69; 9 Geo. 4, c. 83; and 2 & 3 Wm. 4, c. 69. The most important provisions of these acts will be found in the chapter upon New South Wales, p. 622, et seq. Both colonies stand in precisely the same situation to England, being crown colonies, and places to which convicts may be transported.

#### ACTS OF THE COLONIAL LEGISLATIVE COUNCIL.

There are very few Acts of the Legislative Council worthy of remark, as most of them only relate to matters of excise and police, whilst there are others bringing into operation Acts of the British Legislature which would have effect there without any such introduction, as, for instance, the Roman Catholic Relief Bill.

*Registration of Deeds.*—The most important Act of the Legislative Council is that for the Registration of Deeds, &c. affecting lands, tenements, and hereditaments; it was passed in the year 1827, (8 Geo. 4, No. 5,) and is avowedly framed upon the principles of the Act for the Registration of Deeds, &c. in the county of Middlesex.

Section 1 enacts that from and after the 1st November, 1827, an office shall be established for receiving memorials of registration of all conveyances and other deeds, wills, and devises, and other instruments in writing then or afterwards made or executed, and all judgments then subsisting and unsatisfied, or afterwards obtained, by which lands, tenements, or hereditaments within the colony or its dependencies shall or may be affected.

2. Deeds, &c. registered in pursuance of and in conformity with the provisions of this act, to be entitled to and be allowed to have priority over other instruments, and all conveyances, &c., not registered, shall be deemed to be null and void against *bonâ fide* purchasers or mortgagees.—“Provided that nothing herein contained shall extend to or affect *bonâ fide* leases at rack-rent for any term not exceeding fourteen years.”

3. Conveyances, &c. (except wills) if made in Van Diemen's Land or its dependencies, to be registered within one month; if made in New South Wales or its dependencies, to be registered within three months; if made in any other place, within twelve months. Wills to be re-

gistered within one month after the death of the testator, if he shall die in Van Diemen's Land or its dependencies; within three months, if he shall die in New South Wales or its dependencies; within twelve months, if he shall die in any other place. Judgments to be registered within one month after the signing or recording thereof. "All instruments shall be entitled to priority, and shall take effect respectively, by relation to the date thereof only, and shall have and be allowed the same force and effect in all respects as the same would have or be entitled to in case this act had never been made, anything herein contained to the contrary notwithstanding."

4. This section prescribes the course to be pursued in registering deeds, &c. "A memorial thereof shall be written on parchment and delivered into the said office, so to be established, signed (in cases of deeds, conveyances, and other instruments, except wills,) by some one of the parties to the original deed or instrument; and (in case of wills and devises) signed by some one of the devisees, (2) or his, her, or their guardians or trustees; and (in case of judgments) signed by the plaintiffs or plaintiff, or his, her, or their authorized agent; and every such memorial shall be verified by the oath of some competent person that the same contains a just and true account of the several particulars therein set forth, which oath shall be made and taken before any Judge or Master in Chancery, or before the Registrar of Deeds so to be appointed, who is hereby authorized and empowered to administer the same."

5. Every memorial of any judgment to contain the following particulars:—The names and additions of the plaintiffs and defendants respectively; the sums thereby received or secured; the time of the signing or entering up of the same, and the sum of money *bonâ fide* due thereon; and every memorial of any deed or conveyance, will, or other instrument, and the particular nature and object thereof, the names and additions of all the parties to such deed, &c., and of the deviser and devisee or devisees of such will, and the names and additions of all the witnesses thereto, and shall especially particularize and express the lands, tenements, and hereditaments affected or intended to be affected by such deeds, conveyances, will, or instru-

(2) If a testator dying in Van Diemen's Land should devise his property to persons in England, it would be

impossible for the devisees to comply with the provisions of this act.

ment, and the proper and ordinary or accustomed names of the districts, towns, or places where the same lands, tenements, and hereditaments shall be situate, and (except in case of wills) the pecuniary or other consideration for the same, and to whom or how paid, in the form or to the effect of the form set forth in the schedule hereto annexed, marked A. Provided always, that where there shall be more writings than one, for perfecting the same conveyance, devise, or security affecting the same lands, tenements, and hereditaments, all such writings shall be stated in one and the same memorial, in which memorial it shall be sufficient to particularize such lands, tenements, and hereditaments once only.

6. The registrar shall give a receipt for the memorial, specifying the day and time when received, and shall indorse on the back of the memorial the day and time when received and the name and abode of the person verifying the same, and such indorsement shall be evidence of the registration.

7. The books of registration shall be open to inspection.

8. When mortgages or judgments shall be paid or satisfied, the registrar shall make entry thereof on receiving a certificate signed by the respective mortgagors or mortgagees, or plaintiffs and defendants.

9. Some competent person must depose that the certificate contains a correct account.

10. Wills may be deposited with the registrar for safe custody, and on the decease of the testator shall be opened by the registrar and delivered to the executor.

11. If any clerk in the registrar's office shall alter any document with the view of falsifying it, he shall be guilty of felony.

12. Certain fees to be taken by the registrar.

SCHEDULE A.—1. Date of will or instrument. 2. Nature and object thereof. 3. Names and additions of the parties or devisors. 4. Names and additions of the witnesses thereto. 5. Description of the lands or property affected. 6. Name of the district or place where situate. 7. Consideration, and to whom and how paid. 8. Any other particulars that the case may require.

*Quarter Sessions Act.*—An Act entitled the Quarter

Sessions Act, passed in the year 1830, introduced Courts of Quarter Sessions, having jurisdiction of equal extent to the Courts of Quarter Sessions in England.

*Court of Requests Act.*—The act called the Court of Requests Act, passed in 1830, empowered the Lieutenant-Governor to appoint Courts of Request for the several police districts.

*Jury Act.*—The Jury Act, passed in 1830, prescribes the course to be adopted in summoning juries, which the 9 Geo. 4, c. 83, s. 8, has partially allowed to be introduced in the trial of issues of fact.

*Usury Laws.*—The act called the Usury Laws Act, passed in 1830, is a curious act, as it declares what is *not* to be the law, viz. that the usury laws of England shall not extend to this colony. (3)

*Administration of Justice Act.*—An act with this title, passed in 1831, is one of a still more remarkable character, as it is not only repugnant but in direct opposition to that part of the Charter of Justice appointing a Puisne Judge. The home government have however remedied the objection by nominating another judge.

*Insolvent Debtors' Act.*—This act was passed in the month of February, 1834, and empowers the judges of the Supreme Court to declare insolvencies, and to authorize the collection and distribution of insolvents' estates.

*Parish Register Act.*—This act, passed by the Legislative Council of New South Wales previous to this settlement being declared an independent colony, is continued in force here by an act of the Council. (4)

(3) See ante, p. 91.

(4) For this act see ante, p. 625.



## VAN DIEMEN'S LAND—CHARTER OF JUSTICE.

4th March, 1831.

*Extract from Patents of the First Year of the Reign of King William the Fourth.*

WILLIAM the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, To all to whom these presents shall come, greeting: Whereas by an act passed in the fourth year of the reign of our royal brother and predecessor, his late Majesty King George the Fourth, intituled "An Act to provide until the first day of July, 1827, and until the end of the next session of parliament, for the better administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto," it was amongst other things enacted, that it should be lawful for his said late Majesty, his heirs and successors, by charters or letters-patent under the great seal of the United Kingdom of Great Britain and Ireland, to erect and establish courts of judicature in New South Wales and Van Diemen's Land respectively, which should be styled "The Supreme Court of New South Wales," and "The Supreme Court of Van Diemen's Land:" and whereas by letters-patent under the great seal of the United Kingdom aforesaid, bearing date at Westminster on the 13th day of October in the year aforesaid, his said late Majesty, in pursuance and by virtue of the said act of parliament, did grant, direct, ordain and appoint, that there should be within that part of the colony of New South Wales called Van Diemen's Land a court, which should be called "The Supreme Court of Van Diemen's Land:" And whereas by a certain other act of parliament passed in the ninth year of the reign of his said late Majesty, intituled "An Act to provide for the administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof, and for other purposes relating thereto," it was enacted, that it should be lawful for his said late Majesty, his heirs and successors, by charters or letters-patent under the great seal of the United Kingdom of Great Britain and Ireland, to erect and establish courts of judicature in New South Wales and Van Diemen's Land respectively, which should be styled "The Supreme Court of New South Wales," and "The Supreme Court of Van Diemen's Land," and that each of such courts respectively should be holden by one or more judge

or judges, not exceeding three, and should have such ministerial or other officers as should be necessary for the administration of justice in the said courts respectively, and for the execution of the judgments, decrees, orders and process thereof; and that the said judges should from time to time be appointed by his said late Majesty, his heirs and successors; and that the said ministerial and other officers of the said courts respectively should from time to time be appointed to and removed from their respective offices in such manner as his said late Majesty, his heirs and successors, should by such charters or letters-patent as aforesaid direct: and it was thereby further enacted, that until his said late Majesty should cause such charters or letters-patent to be issued as aforesaid, the Supreme Courts of New South Wales and Van Diemen's Land respectively, instituted by his said late Majesty's letters-patent under the great seal, bearing date respectively the 13th day of October, in the fourth year of his said late Majesty's reign, should retain and exercise the several jurisdictions and powers in such courts vested by his said late Majesty's said last-mentioned letters-patent, so far as the same might not be altered by that act, as fully and effectually as if such courts respectively had been instituted in virtue and in pursuance of the said act: And it was thereby enacted, that the said letters-patent and all orders, acts, matters and things made and done in pursuance of the powers and authorities vested in his said late Majesty in and by the said act passed in the fourth year of the reign of his said late Majesty should be of the same force and effect as if the same had respectively been issued, made, done and performed by virtue and in pursuance of the said act of the ninth year of his said late Majesty's reign: Now know ye, that we upon full consideration of the premises, and of our especial grace, certain knowledge and mere motion, have, in pursuance of the said act of parliament of the ninth year of the reign of his said late Majesty, thought fit to grant, direct, ordain and appoint, and by these presents do accordingly for us, our heirs and successors, grant, direct, ordain and appoint, that there shall be within our colony of Van Diemen's Land a court, which shall be called "The Supreme Court of Van Diemen's Land;" and we do hereby create, direct and constitute the said Supreme Court of Van Diemen's Land to be a court of record; and we do further will, ordain and appoint, that the said Supreme Court of Van Diemen's Land shall consist of and be holden by and before two judges, of whom one shall be and be called the Chief Justice of the Supreme Court of Van Diemen's Land, and the other shall be and be called the Puisne Judge of the Supreme Court of Van Diemen's Land; and such judges shall respectively be barristers in England or Ireland of not less than five years standing, to be named and appointed from time to time by us, our heirs and successors, by letters-patent under our or their great seal of the United Kingdom of Great Britain and Ireland;

and such judges shall hold their offices during the pleasure of us, our heirs and successors, and not otherwise. And we do further grant, ordain and appoint, that the said Supreme Court of Van Diemen's Land shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms within an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of Van Diemen's Land;" and we do hereby grant, ordain and appoint, that the said seal shall be delivered to and kept in the custody of the said Chief Justice. And we do further grant, appoint and declare, that no judge of the said Supreme Court of Van Diemen's Land shall be capable of accepting, taking or performing any other office or place of profit or emolument, on pain that the acceptance of any such other office or place as aforesaid shall be and be deemed in law *de facto* an avoidance of his office of judge, and the salary thereof shall cease and be deemed to have ceased accordingly from the time of such acceptance of any such other office or place. And we do hereby constitute and appoint our trusty and well-beloved John Lewes Pedder, Esquire, to be the first Chief Justice, and our trusty and well-beloved Alexander M'Duff Baxter, Esquire, to be the first Puisne Judge of the said Supreme Court of Van Diemen's Land, and the said John Lewes Pedder and Alexander M'Duff Baxter being respectively barristers in England of five years standing and upwards. And we do hereby ordain, appoint and declare, that there shall be and belong to the said court the following officers, that is to say, a Registrar, and another officer to be called the Master and Keeper of Records, and such and so many other officers as to the Chief Justice of the said court for the time being shall from time to time appear to be necessary for the administration of justice and the due execution of all the powers and authorities which are granted and committed to the said court by these our letters-patent: Provided nevertheless, that no new office shall be created in the said court unless the Governor or acting Governor for the time being of our said colony shall first signify his approbation thereof to our said Chief Justice for the time being, in writing under the hand of such Governor or acting Governor as aforesaid: And we do further ordain and direct that all persons who shall and may be appointed to the several offices of Registrar or Master and Keeper of Records of the said Supreme Court of Van Diemen's Land, or to any offices in the said court, whereof the duties shall correspond to those performed by the Master, Registrar, Prothonotary, or Keeper of Records of any or either of our Courts of Record at Westminster, shall be so appointed by us, our heirs, and successors, by warrant under our or their royal sign manual; and that all persons who shall or may be appointed to any other office within the said Supreme Court of Van Diemen's Land shall be so appointed by the Governor for the time being of the said colony.

And we do further direct and appoint that the several officers of the said court so to be appointed as aforesaid by us, our heirs, and successors, shall hold their respective offices during our and their pleasure; and that the several officers of the said court so to be appointed as aforesaid by the said Governor, shall be subject to be removed by the said court from the offices therein upon reasonable cause: And we do hereby authorize and empower the said Supreme Court of Van Diemen's Land to approve, admit, and enrol such and so-many persons, having been admitted barristers at law or advocates in Great Britain or Ireland, or having been admitted writers, attornies, or solicitors in one of our courts at Westminster, Dublin, or Edinburgh, or having been admitted as proctors in any Ecclesiastical Court in England, to act as well in the character of barristers and advocates, as of proctors, attornies, and solicitors in the said court; and which persons, so approved, admitted, and enrolled as aforesaid, shall be and are hereby authorized to appear and plead and act for the suitors of the said court, subject always to be removed by the said court from their station therein, upon reasonable cause; and we do declare that no other person or persons whatsoever shall be allowed to appear and plead, or act in the said Supreme Court of Van Diemen's Land, for and on behalf of such suitors or any of them: Provided always, and we do ordain and declare that in case there shall not be a sufficient number of such barristers-at-law, advocates, writers, attornies, solicitors, and proctors within the said colony, competent and willing to appear and act for the suitors of the said court, then and in that case the said Supreme Court of Van Diemen's Land shall and is hereby authorized to admit so many other fit and proper persons to appear and act as barristers, advocates, proctors, attornies, and solicitors, as may be necessary, according to such general rules and qualifications as the said court shall for that purpose make and establish: Provided, that the said court shall not admit any person to act in any or either of the characters aforesaid, who hath been by due course of law convicted of any crime, which, according to any law now in force in England would disqualify him from appearing and acting in any of our Courts of Record at Westminster. And we do hereby ordain and declare that the Governor or acting Governor for the time being of the said colony of Van Diemen's Land shall yearly, on the first Monday in the month of January in each year, by warrant under his hand and seal, nominate and appoint some fit and proper person to act as and be the sheriff for our said colony of Van Diemen's Land and its dependencies for the year ensuing, which sheriff when appointed shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath faithfully to execute his office, and the oath of allegiance, before the Governor or acting Governor, who are hereby authorized to administer the same; and such sheriff shall continue in such his office

during the space of one whole year, to be computed from the said first Monday in the month of January, and until another shall be appointed and sworn into the said office; and in case such sheriff shall die in his office, or depart from our said colony of Van Diemen's Land, then another person shall, as soon as conveniently may be after the death or departure of such sheriff, be in like manner appointed and sworn in as aforesaid, and shall continue in his office for the remainder of the year, and until another sheriff shall be duly appointed and sworn into the said office: And we do further order, direct, and appoint that the said sheriff and his successors shall by themselves, or their sufficient deputies to be by them appointed and duly authorized under their respective hands and seals, and for whom he and they shall be responsible during his or their continuing in such office, execute, and the said sheriff and his said deputies are hereby authorized to execute all the writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of Van Diemen's Land and make return of the same, together with the manner of the execution thereof, to the Supreme Court of Van Diemen's Land, and to receive and detain in prison all such persons as shall be committed to the custody of such sheriff by the said Supreme Court of Van Diemen's Land, or by the Chief Justice or the Puisne Judge of the said court: And we do further authorize our Governor or acting Governor for the time being of the said colony of Van Diemen's Land, to re-appoint the same person to fill the office of sheriff from year to year, if it shall appear to our said Governor or acting Governor expedient so to do; so nevertheless as that such appointment shall be annually renewed and be not ever made for more than one year: Provided nevertheless, and we do hereby require our said Governor or acting Governor of our said colony for the time being, in the selection of any person or persons to fill the said office of Sheriff of Van Diemen's Land, to conform himself to such directions as may from time to time be given in that behalf by us, our heirs, and successors, through one of our or their principal Secretaries of State: And we do further direct, ordain, and appoint, that whenever the said Supreme Court of Van Diemen's Land shall direct or award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot or ought not by law to execute the same, in every such case the said Supreme Court of Van Diemen's Land shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court: Provided always, and we do hereby ordain

and declare, that the said Supreme Court of Van Diemen's Land shall fix certain limits beyond which the said sheriff shall not be compelled or compellable to go in person, or by his officers or deputies, for the execution of any process of the said court; and when the process of the said court shall be to be executed in any place or places beyond the limits so to be fixed, we grant, ordain, and direct that the said Supreme Court of Van Diemen's Land shall, upon motion, direct by what person or persons, and in what manner such process shall be executed, and the terms and conditions which the party, at whose instance the same shall be issued, shall enter into, in order to prevent any improper use or abuse of the process of the said court, and the said sheriff shall and he is hereby required to grant his special warrant or deputation to such person or persons as the said court shall direct for the execution of such process; and in that case we direct and declare that the said sheriff, his executors, or administrators, shall not be responsible or liable for any act to be done in or in any way respecting the execution of such process, under and by virtue of such special warrant, and that any person or persons being aggrieved under or by pretence of such special warrant, shall and may seek their remedy under any security which may have been directed to be taken upon the occasion, and which the said court is hereby authorized to direct to be taken. And whereas in the said last-mentioned Act of Parliament, it is enacted that the said Supreme Courts respectively shall be courts of ecclesiastical jurisdiction, and shall have full power and authority to administer and execute within New South Wales and Van Diemen's Land, and the dependencies thereof respectively, such ecclesiastical jurisdiction and authority as shall be committed to the said Supreme Courts respectively, by our charters or letters-patent: Now we do hereby, for us, our heirs, and successors, grant, ordain, establish, and appoint that the said Supreme Court of Van Diemen's Land shall be a court of ecclesiastical jurisdiction, with full power to grant probates, under the seal of the said court, of the last wills and testaments of all or any of the inhabitants of the said colony and its dependencies, and of all other persons who shall die and leave personal effects within the said colony and its dependencies, and to commit letters of administration, under the seal of the said court, of the goods, chattels, credits, and all other effects whatsoever of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within the said colony and its dependencies, or where the executor, being duly cited, shall not appear and sue forth such probate, annexing the will to the letters of administration, when such persons shall have left a will without naming any executor or any person for executor who shall then be alive and resident within the said colony and its dependencies, and who, being duly cited thereunto, will appear and sue forth a probate thereof, and to sequester the goods and chattels, credits and other effects whatsoever of such persons so dying,

in cases allowed by law, as the same is and may be now used in the diocese of London; and to demand, require, take, hear, examine, and allow, and if occasion require to disallow and reject, the accounts of them in such manner and form as may be used in the diocese of London, and to do all other things whatsoever needful and necessary in that behalf: Provided always, and we do hereby authorize and require the said court, in such cases as aforesaid, where letters of administration shall be committed with the will annexed, for want of an executor applying in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor whenever he shall duly appear and sue forth the same: And we do hereby further authorize and require the said Supreme Court of Van Diemen's Land to grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within the jurisdiction of the said court, and being of the age of twenty-one years, and in case no such person shall then be residing within the jurisdiction of the said court, or, being duly cited, shall not appear and pray the same, to the registrar of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the court shall see fit: Provided always, that probates of wills and letters of administration to be granted by the said court shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the said colony and its dependencies: And we do hereby further enjoin and require that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond, to be entered into to us, our heirs, and successors, for the payment of a competent sum of money, with one, two, or more able sureties, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estates, credits, and effects of the deceased, which bond shall be deposited in the said court among the records thereof, and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said court; and the condition of the said bond shall be to the following effect: "That if the above-bounden administrator of the goods, chattels, and effects of the deceased do make or cause to be made a true and perfect inventory of all and singular *the goods, credits, and effects* of the said deceased which have or shall come to the hands, possession, or knowledge of him the said administrator, or to the hands or possession of any other person or persons for him, and the same so made do exhibit into the said Supreme Court of Van Diemen's Land at or before a day therein to be specified, and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall

come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make or cause to be made a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she, or they shall be lawfully required, and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration account, the same being first examined and allowed of by the said Supreme Court of Van Diemen's Land, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of none effect, or else to be and remain in full force and virtue;" and in case it shall be necessary to put the said bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said court to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said court, be allowed to sue the same in the name of the Attorney-General for the time being of the said colony, and the said bond shall not be sued in any other manner: And we do hereby authorize and empower the said court to order that the said bond shall be put in suit in the name of the said Attorney-General: And we do further will, order and require, that the said court shall fix certain periods when all persons to whom probates of wills and letters of administration shall be granted by the said court, shall from time to time, until the effects of the deceased person shall be fully administered, pass their accounts relating thereto before the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed by the said court, then, or at any earlier time, if the said court shall see fit so to direct, the person or persons to whom such probate or administration shall be granted, shall pay, deposit and dispose of the balance of money belonging to the estate of the deceased then in his, her or their hands, and all money which shall afterwards come into his, her or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, in such manner and unto such persons as the said court shall direct for safe custody; and we require that the said court shall from time to time make such order as shall be just for the due administration of such assets and for the payment or remittance thereof or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said colony and its dependencies, who may be entitled thereto or any part thereof as creditors, legatees or next of kin, or by any other right or title whatsoever. And we further order and direct,



that it shall be lawful for the said court to allow to any executor or administrator of the effects of any deceased person (except as herein mentioned) such commission or per centage out of their assets as shall be just and reasonable for their pains and trouble therein: Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time or to dispose of any money, goods, chattels or securities with which he shall be chargeable, in such manner as in pursuance of any general or special rule or order of the said court shall be requisite; and moreover every such executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels or securities with which he shall be chargeable, shall be charged with interest at the rate then current within the said colony and its dependencies for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof. And we do hereby authorize the said Supreme Court of Van Diemen's Land to appoint guardians and keepers of infants and their estates according to the order and course observed in that part of our United Kingdom called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves or their estates, which we hereby authorize and empower the said court to inquire [into,] hear and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known. And we do hereby direct, establish, and ordain, that any person or persons may appeal to us, our heirs and successors, in our or their Privy Council, from any judgment, decree, order or sentence of the said Supreme Court of Van Diemen's Land, in such manner, within such time, and under and subject to such rules, regulations and limitations as are hereinafter mentioned, that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £1000 sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand or question to or respecting property or any civil right, amounting to or of the value of £1000 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence, may within fourteen days next after the same shall have been pronounced, made or given, apply to the said court by petition for leave to appeal therefrom to us, our heirs and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any such [?] sum of money, or perform any duty, the said court shall and is hereby empowered either to direct that the judgment, decree, order or sentence

appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear to be most consistent with real and substantial justice; and in case the said Court shall direct such judgment, decree, order or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said court, for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon; or in case the said court shall direct the execution of any such judgment, decree, order, or sentence to be suspended pending the appeal, the person or persons against whom the same shall have been given, shall in like manner and before any order for the suspension of any such execution is made, enter into good and sufficient security to the said court for the due performance of such judgment or order as we, our heirs and successors, shall think fit to make thereupon; and in all cases we will and require that security shall also be given by the party or parties appellant to the satisfaction of the said court for the prosecution of the appeal and for the payment of all such costs as may be awarded by us, our heirs and successors, to the party respondent; and if such last-mentioned security shall be entered into within three months from the date of such petition for leave to appeal, then, and not otherwise, the said court shall allow the appeal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her or their appeal to us, our heirs and successors, in our or their Privy Council in such manner and under such rules as are observed in appeals made to us from our plantations or colonies: and we do hereby reserve to ourself, our heirs and successors, in our or their Privy Council, full power and authority, upon the humble petition, at any time, of any person or persons aggrieved by any judgment or determination of the said court, to refuse or admit his, her or their appeal therefrom, upon such terms and upon such limitations, restrictions and regulations as we or they shall think fit, and to reverse, correct or vary such judgment or determination as to us or them shall seem meet: and it is our further will and pleasure, that in all cases of appeal allowed by the said court, or by us, our heirs or successors, the said court shall certify and transmit to us, our heirs, or successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said court. And we do further direct and ordain, that the said court shall in all cases of appeal to us, our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as we shall think

fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or other order or rule of the said court of Van Diemen's Land, should or might have been executed: and we do hereby strictly charge and command all governors, commanders, magistrates, ministers, civil and military, and all our liege subjects within and belonging to the said colony, that in the execution of the several powers, jurisdictions and authorities hereby granted, made, given or created, they be aiding and assisting, and obedient in all things, as they will answer the contrary at their peril: Provided always, that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend to prevent us, our heirs and successors, to repeal these presents or any part thereof, or to make such further or other provision by letters-patent for the administration of justice, civil and criminal, within the said colony and the places now or at any time hereafter to be annexed thereto, as to us, our heirs and successors, shall seem fit, in as full and ample a manner as if these presents had not been made, these presents or anything herein contained to the contrary thereof in anywise notwithstanding. In witness, &c., the 4th day of March.

By Writ of Privy Seal.

## WESTERN AUSTRALIA.

THIS colony, which is frequently called the Swan River Settlement, is situated on the western coast of New Holland, between the parallels of  $31^{\circ}$  and  $36^{\circ}$  south latitude, and  $115^{\circ}$  and  $119^{\circ}$  east longitude. It comprehends the settlement on the banks of the Swan River as well as those on the shores of Hardy's Inlet and King George's Sound. The towns are Perth, the seat of government, Fremantle, Augusta, and Albany.

### HISTORY.

The Swan River was discovered by Vlaming in 1697, but little notice was taken of it until 1827, when Captain Stirling, in a vessel called the *Success*, surveyed the adjacent coast and the banks of the river. The flattering accounts that Captain Stirling and the government botanist, Mr. Fraser, gave of the country, induced Sir George Murray, the Secretary for the Colonies, in the year 1828, to determine upon establishing a colony there. (1) Accordingly there was issued from the Colonial Office on the 5th December, 1828, the following "Terms for Settlers desirous of proceeding to the Swan River."—"Although it is the intention of His Majesty's government to form a settlement on the western coast of Australia, the government do not intend to incur any expense in the conveyance of settlers, or in supplying them with necessaries after their arrival. Such persons, however, as may be prepared to proceed to that country at their own cost before the year 1829, in parties comprehending a proportion of not less than five female to six male settlers,

(1) The settlement at King George's Sound was effected some time previously, but it was then only a penal settlement to the other Australian set-

tlements. Since King George's Sound has been added to the Swan River Settlement the convicts have been removed.

will receive grants of land in fee-simple (free of quit rent), proportioned to the capital they may invest upon public or private objects in the colony, to the satisfaction of His Majesty's government at home, certified by the Superintendent or other officer administering the colonial government, at the rate of 40 acres for every sum of £3 so invested, provided they give previous security; first, that all supplies sent to the colony, whether of provisions, stores or other articles which may be purchased by the capitalists there, or which shall have been sent out for the use of them or their parties on the requisition of the Secretary of State, if not paid for on delivery in the colony, shall be paid for at home, each capitalist being to be held liable in his proportion; and secondly, that in the event of the establishment being broken up by the Governor or Superintendent, all persons desirous of returning to the British islands, shall be conveyed to their own homes at the expense of the capitalists by whom they may have been taken out. The passage of labouring persons, whether paid for by themselves or others, or whether they be male or female, provided the proportion of the sexes before mentioned be preserved, will be considered as an investment of capital, entitling the party by whom any such payment may have been made to an allowance of land at the rate of £15, that is, of 200 acres of land for the passage of every such labouring person over and above any other investment of capital.

“Any land thus granted, which shall not have been brought into cultivation, or otherwise improved or reclaimed from its wild state, to the satisfaction of the government, within twenty-one years from the date of the grant, shall at the end of twenty-one years revert absolutely to the crown.”

Other terms were subsequently issued from the Colonial Office, extending to settlers, who should arrive before the end of 1830, the bounty of a free grant of land according to the amount of capital they should be prepared to invest; the terms provided, however, that “any land so allotted, of which a fair proportion, at least one-fourth, shall not have been brought into cultivation, or otherwise improved to the satisfaction of the local government, within three years from the date of the license of occupation, shall at the end of three years be liable to a payment of 6*d.* per acre for all the land not so culti-

vated or improved into the public chest of the settlement; and at the expiration of seven years more, so much of the whole grant as shall still remain in an uncultivated or unimproved state will revert absolutely to the crown. And in every grant will be contained a condition, that at any time within ten years from the date thereof the government may resume, without compensation, any land not then actually cultivated or improved as before mentioned, which may be required for roads, canals, or quays, or for the site of public buildings."

In the year 1829 Captain Stirling, the Governor, and the first settlers landed on the Swan River; and settlers continued to arrive from that time to the expiration of the year 1830, when the number is supposed to have amounted to 3000. The population was subsequently reduced to about 2000, as many persons quitted the place, not having sufficient firmness to face the difficulties which always present themselves in founding a new colony. The remaining settlers have now surmounted those difficulties, and smoothed the way for future adventurers.

#### GOVERNMENT.

The 10 Geo. 4, c. 22, entitled "An Act to provide until the 31st December, 1834, for the government of His Majesty's Settlement in Western Australia, on the western coast of New Holland," is the only act of parliament specifically relating to this colony. It enacts, "that it shall and may be lawful for His Majesty, his heirs and successors, by any order or orders to be by him or them made, with the advice of his or their Privy Council, to make, ordain and (subject to such conditions and restrictions as to him or them shall seem meet) to authorize and empower any three or more persons resident and being within the said settlement to make, ordain and establish all such laws, institutions and ordinances, and to constitute such courts and officers as may be necessary for the peace, order and good government of His Majesty's subjects and others within the said settlement."

Notwithstanding this act received the royal assent as early as the 14th May, 1829, no charter, or order in council in the nature of a charter, was promulgated until the 1st November, 1830, when His Majesty with the advice of his Privy Council, and in pursuance and exercise of the authority in him vested by the said act, or-

dered that the Governor for the time being, or the officer administering the government, the senior officer of the land forces next in command, the Colonial Secretary of the territory, the Surveyor-General, and the Advocate-General, so long as they should be resident in the settlement, or any three of them, of whom the acting Governor was to be one, should be a Legislative Council, to make the necessary laws and ordinances, and to constitute courts and officers for the government of the colony. (2)

#### CIVIL JUDICATURE.

The Governor and Legislative Council, by a law (2 Wm. 4, No. 1,) passed 10th February, 1832, established a court of civil judicature, called "The Civil Court of Western Australia," and constituted it a Court of Record, having jurisdiction in all pleas and in all cases as fully and amply in the settlement as the Courts of King's Bench and Common Pleas and Exchequer have in England; and also gave it the power to hear and determine questions of idiocy and lunacy, and to appoint guardians and committees over the persons and properties of infants, idiots, and lunatics, and to grant probates of wills and letters of administration. A party feeling aggrieved, however, by a decision of the court in cases where the thing in dispute exceeds £100, may appeal to the Governor and other members of the Executive Council, whose judgment is final, and is to be executed by the court as a judgment pronounced by the court itself.

*Mesne Process.*—The 8th section of the same colonial act provides that no arrest shall be allowed on mesne process, and that all process of execution shall be directed against property only, and not against the person, except in cases where the debtor is about to leave the colony, when, on cause stated on affidavit, the Commissioner of the Court may issue a warrant for his arrest; but in such cases the party at whose instance the debtor has been arrested must prosecute his suit with due diligence, or the commissioner may on petition discharge the party arrested.

The pleadings are oral, and cases involving amounts under £20 are determined without a jury, but other

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(2) See this Order in Council, post.

cases are tried before a jury or not, at the option of either party. The judge presiding in this court is called the Commissioner of the Civil Court of Western Australia. He is appointed by the Governor by warrant under the seal of the colony, and holds his office during good behaviour, but may be dismissed by the Governor and Executive Council by an order also under the seal of the colony.

The officers of the court are a Registrar, Messenger and Bailiff, attendant upon the court, and two Bailiffs resident in distant parts of the settlement.

#### *Court of Quarter Sessions.*

This court is constituted by a local act, and has power to hear and determine all felonies, capital or otherwise, perjuries, forgeries and misdemeanors; but in cases in which death is awarded by the court, the sentence is required to be approved of by the Executive Council before it is carried into effect. The Governor appoints the chairman of the court by warrant.

#### *Vice-Admiralty Court.*

This court is instituted by letters-patent, the King's warrant for which bears date the 12th day of November, 1831. The court has jurisdiction to the same extent as the Courts of Vice-Admiralty in other colonies, excepting that it cannot adjudicate in prize causes.

#### LAWS.

The laws of England are generally adopted in the administration of justice, but none of the acts of the British Legislature relating specifically to New South Wales and Van Diemen's Land extend to this colony. (3)

#### *Acts of the Legislative Council.*

The principal acts of the Legislative Council, besides those constituting the Civil Court and Court of Quarter Sessions, are the acts for regulating juries and the office of sheriff, for securing debts due to the crown, for regis-

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(3) The mercantile interests of England require the 54 Geo. 3, c. 15, to be extended there.



tering deeds, &c. and for facilitating and simplifying the transfer of real property.

2 Wm. 4, (No. 3). An Act for regulating the constitution of Juries and the office of Sheriff. (Passed 2d March, 1832.)

The number of petty jurymen (s. 1) in civil cases to be twelve, and in grand juries not less than thirteen nor more than twenty-four. Juries to be subject to the same rules as in England, unless where altered by this act. All jurymen must be between the ages of 21 and 60, and possessed of a real estate of the value of £50, or of personal property of the value of £100, and must have been resident within the colony for one year.

Special juries (s. 17) are to consist of not less than eighteen nor more than twenty-four persons "of the greatest repute and substance."

The Governor may (s. 23) appoint a sheriff annually for the colony, and re-appoint him if expedient. If the sheriff is incompetent to act on account of any good ground of challenge, the court may award the process to some other person.

2 Wm. 4, (No. 5). An Act to secure the payment of debts due to the Crown. (Passed 6th March, 1832.)

This act declares the mode of recovering crown debts in England to be unsuited to this colony, and provides (s. 1) that the Colonial Secretary is to furnish the Clerk of the Civil Court with a list of debtors to the crown; and whenever a private person recovers judgment against any such debtor, the clerk is to give notice of a stay of execution on such judgment, and then to call on the debtor to show cause why execution should not issue for the crown. The court may hear the question and award execution, either to the crown or the creditor. (4)

2 Wm. 4, (No. 6). An Act to prevent secret and fraudulent conveyances, and to provide means whereby the title to real property may be ascertained. (Passed 6th March, 1832.)

Enacts, (s. 1) that from and after the passing of this act there shall be established at Perth a public office for the registration of deeds, conveyances and other instruments, wills and judgments, in manner hereafter

(4) This law making the debtor the guardian of the rights of the creditor is one of the most absurd enactments

that ever issued even from a colonial legislative council.

mentioned; and that a fit and proper person shall be appointed Registrar thereof by his Excellency the Governor by warrant under his hand and the public seal of the colony; and that from and after the establishment of such office, all conveyances and other deeds, wills and devises, and other instruments in writing now or hereafter to be made or executed, and all judgments hereafter to be obtained, (by which conveyances, deeds and other instruments in writing, wills and judgments, any lands, tenements or hereditaments in Western Australia or its dependencies now are or shall or may be hereafter affected,) may be entered and registered in the said office.

The second section directs, that all such judgments, deeds, conveyances or instruments in writing, obtained, made or executed respectively after the passing of this act, shall have priority one over the other according to the priority of their respective dates of registration, and that all judgments, deeds, conveyances or instruments in writing as last aforesaid, and all future devises which shall not be registered in pursuance of this act, shall (as against any subsequent *bonâ fide* purchaser or mortgagee of the same lands, tenements or hereditaments for valuable consideration,) be absolutely null and void to all intents and purposes, provided that nothing herein contained shall extend to *bonâ fide* leases at rack-rent for any term not exceeding fourteen years.

The third section enacts, that all judgments, deeds, wills, conveyances or instruments in writing hereafter obtained, made or executed, which shall be duly registered within the respective times next mentioned, (that is to say,) all deeds, conveyances and other instruments in writing (except wills) which (if executed in Western Australia or its dependencies) shall be registered within one month, or which (if executed in any other place) shall be registered within eight months after the time of execution thereof respectively; and all wills which (if the devisor die in Western Australia or its dependencies) shall be registered within one month, or which (if the devisor die in any other place) shall be registered within twelve months after the decease of every devisor respectively; and all future judgments which shall be registered within one month after the entry or recording thereof, shall severally be in like manner entitled to priority, and shall take

effect respectively by relation to the date thereof only, in the same manner as if this act had never been made.

§ Wm. 4, (No. 7). An Act to facilitate and simplify the transfer of Real Property.

A conveyance in fee may be made (s. 1) of hereditaments situate within the colony by bargain and sale without livery of seisin, attornment or other ceremony.

Simple mortgages may be effected by the deposit of deeds, or by agreement, (s. 2); and on non-payment of the mortgage-money, the mortgagor shall convey the fee.

A married woman may (s. 4) pass her interest in lands by an instrument by her jointly executed with her husband, before a commissioner or justice of the peace; and tenant in tail (s. 6) may bar the entail by a deed executed before the like persons. Any other interest that in England would require to be passed by fine or recovery, may (s. 7) be passed in the colony by a deed executed as above. Instruments affecting land (s. 8) in this colony, if executed before the Lord Mayor of London, or the chief magistrate of any other city, borough or town corporate, shall have the same effect as if executed before a commissioner or justice of the peace in the colony.

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#### WESTERN AUSTRALIA—ORDER IN COUNCIL.

At the Court at Saint James's, the 1st of November, 1830;

Present, The King's Most Excellent Majesty in Council.

WHEREAS by a certain act of parliament passed in the tenth year of the reign of his late Majesty King George the Fourth, chap. 22, intituled "An Act to provide until the 31st day of December, 1834, for the government of His Majesty's Settlements in Western Australia, on the western coast of New Holland," it is enacted, "that it shall and may be lawful for His Majesty, his heirs and successors, by any order or orders to be by him or them made with the advice of his or their Privy Council, to make, ordain and (subject to such conditions and restrictions as to him or them shall seem meet), to authorize and empower any three or more persons resident and being within the said settlements, to make, ordain and establish all such laws, institutions and ordinances, and to constitute such courts and officers as may be necessary for the peace, order and good government of His Majesty's sub-

jects and others within the said settlements: provided that all such orders in council, and all laws and ordinances so to be made as aforesaid, shall be laid before both Houses of Parliament as soon as conveniently may be after the making and enactment thereof respectively;” His Majesty doth therefore, with the advice of his Privy Council, and in pursuance and exercise of the authority in him vested by the said act, order, and it is hereby ordered, that the Governor for the time being of the said settlements of Western Australia, or the officer administering the government thereof, the senior officer of His Majesty’s land forces next in command, the Colonial Secretary of the said territory for the time being, the Surveyor-General thereof for the time being, and the Advocate-General thereof for the time being, so long as they shall respectively be resident in the said settlements, or any three of them, of whom the acting Governor to be one, shall have authority and power to make, ordain and establish all such laws and ordinances, and to constitute such courts and officers as may be necessary for the peace, order and good government of His Majesty’s subjects and others within the said settlements; which power and authority shall nevertheless be so exercised, subject to the following conditions and restrictions, that is to say, that all such laws and ordinances as aforesaid, shall by the said Governor or officer administering the government, be with all convenient expedition transmitted to His Majesty for his approbation or disallowance, through one of his Principal Secretaries of State; and that the same or any part thereof shall not be in force within the said settlement after His Majesty’s disallowance thereof, or of any of them, or of any such part thereof, or of any of them as aforesaid, shall be made known therein; and further, that no such law or ordinance shall be made unless the same shall have first been proposed by the said Governor or officer administering the government; and further, that in making all such laws and ordinances, the said several persons shall and do conform to all such instructions as His Majesty shall from time to time be pleased to issue for that purpose; and further, that no court of justice be constituted by the several persons aforesaid within the said settlements, except by a law or ordinance to be by them for that purpose made, under and subject to the conditions and restrictions aforesaid. And the Right Honourable Viscount Goderich, one of His Majesty’s Principal Secretaries of State, is to give the necessary directions herein accordingly.

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\* \* \* Since the manuscript of the chapters on the Australian Settlements was placed in the printer’s hands two bills have been brought into the House of Commons, but have not yet been passed; the one is an Act for Establishing a Criminal Court in Norfolk Island, and the other for founding a Settlement on the shores of Spencer’s Gulf, to be called “Southern Australia.”

## BRITISH POSSESSIONS

IN

## EUROPE.



### GIBRALTAR.(1)



GIBRALTAR, in longitude  $5^{\circ} 19'$  west, latitude  $36^{\circ} 6'$  north, is a town and promontory of Spain in the possession of Great Britain, and is situated in the province of Andalusia in the straits which unite the Atlantic with the Mediterranean. The promontory was the Mount Calpe of the ancients, and one of the pillars of Hercules. It derives its present name from Gebel, an Arabic word signifying mountain, and Tarik or Tarif, the name of a Moorish general, who landed there in the eighth century. It stands at the eastern extremity of the straits to which it gives its name, and is distant about six leagues from the African shores. The bay is spacious, and affords a safe and convenient station for ships, and the water is so deep that large vessels can come close to the quay. The town stands on the shore of the bay on the west side of the rock, at the foot of the mountain towards the main land. The population of the town, exclusive of the garrison, is 12,600.(2) Gibraltar is a free port, and is valuable for commercial purposes as a general entrepot for goods to be sent into Spain or to the adjacent coast of Barbary.—Ency. Metro.; M'Culloch's Dict. Com.

#### HISTORY AND CONSTITUTION.

Gibraltar was taken by the English in 1704, and has been held by them ever since, although besieged in

(1) On the question whether Gibraltar is to be considered a colony, see ante, p. 1, note (1).

(2) Mr. M'Culloch<sup>s</sup> says 16,500. Dict. of Commerce, art. Gibraltar.

1705, 1727, 1779, and 1783. In July, 1722, the inhabitants petitioned the crown to establish a civil judicature there. The petition set forth, "that the petitioners concerned in trade were greatly prejudiced already, and greatly discouraged to continue the same for the want of a form of civil government established there, it being at present under a military one, whereby the petitioners are not secure in their properties; that His Majesty had been pleased to grant his royal letters-patent for the purpose, yet it is notwithstanding in the hands of military magistrates." This petition was advocated by Mr. Hayles, who seems to have acted in the capacity of agent for the petitioners, and by Mr. Godfrey, then one of the members of parliament for the city of London. These gentlemen laid before the Attorney and Solicitor-General (Raymond and Yorke) two papers in support of the prayer of the petition. These papers are quoted by those learned persons in their report to the Lords Commissioners of Trade and Plantations, and from them it appears that "there were at Gibraltar when it was taken one nunnery, two convents—one of the Franciscans and the other of the Cathedral Church, one hospital of Franciscans, the Convent of Our Lady of Europa, four chapels, and 1000 families." The petitioners in the first of these papers stated, that "if a civil government was established there as in the American colonies, or in some such form as followeth, the place would defray the charges of maintaining itself, and in a few years would bring a surplus revenue, viz.:—

"A mayor, aldermen and common-council, to be annually chosen out of the English residing there; two sheriffs, to be chosen out of the common-council; two bailiffs, to be appointed by the sheriffs; a town-clerk; a judge of the admiralty; a chamberlain; a treasurer for the colony; a muster-master, to be appointed by the mayor and aldermen, to muster the militia and the garrison whenever the garrison is mustered, and to sign the muster-rolls with the mayor; the militia to guard the two towers next the land to prevent the soldiers deserting; a house to be settled for the town-hall, where the records shall be kept, and the courts of justice act, and the magistrates assemble; a house to be settled for the governor and officers of the garrison; the private soldiers to have proper bar-

racks assigned them; no consuls of any nation or Jews to reside there."

The substance of the second paper was, that at least 200 of His Majesty's subjects inhabiting in Gibraltar suffered for want of a court of civil judicature being established there, being more ill-treated than strangers.

"That the Spaniards who inhabit there have a Spanish consul and a Spanish lawyer, who decide all differences that arise between them.

"That the French who dwell there are governed after the same manner as the Spaniards, who pay large rents to the Governor monthly for their houses, which, if so applied, would contribute, in a great measure, towards the subsistence of His Majesty's forces in that garrison.

"That the Genoese who live there have likewise a consul and a lawyer of their own nation to decide their disputes.

"That the Dutch who are there have also a Dutch consul and lawyer, who determine their differences."

The report went on to state, that the matter contained in the petition submitted by Mr. Hayles had been taken into consideration by the Lords Commissioners of Trade and Plantations, who reported to the Lords of the Council upon the 2d of August, 1720, that courts at Gibraltar, erected after the manner of the common law courts of Great Britain, would be dilatory and expensive, and consequently not well adapted to the decision of transitory and mercantile disputes in a free port, where there were but few resident inhabitants; they therefore proposed that a more summary judicatory should be established at Gibraltar, and submitted to the Council whether the Judge-Advocate of the garrison might not be authorized, upon any dispute that might arise there, to call to his assistance two merchants, disinterested persons, by whose advice he should decide between the parties contending, from which judgment an appeal might lie to the Governor; and in cases of a considerable value, another appeal from the Governor's decision to His Majesty in Council, as the last resort. The Council had approved of the representation, and by an order of the 11th August, 1720, had directed the Attorney and Solicitor-General to prepare a draft of such powers as it might be fitting for His Majesty to grant. A draft had been accordingly prepared, "after which a commission passed the great seal, directing and empow-

ering the Judge-Advocate for the time being, together with two merchants within the said town of Gibraltar, to be appointed from time to time by the Judge-Advocate, and any two of them (whereof the Judge-Advocate to be one) to be a court, to which court full power and authority was given to hold plea of and to hear and determine in a summary way all pleas of debt, account, or other contracts, trespasses, and all manner of other personal pleas whatsoever between any person or persons whatsoever, residing or being within the said town or precinct or territories thereof, and to give judgment and sentence according to justice and right, and the method of proceeding and manner of execution were thereby prescribed."

This commission, passed in that manner and upon the consideration above mentioned, appeared to be still in force, and the Attorney and Solicitor-General stated that no objection had been made before them, as to the substance of it, but only as to the persons appointed to be judges, the principal whereof being the Judge-Advocate, and he having authority from time to time to name the two merchants that were to act with him, it was objected that this was too great a power to be entrusted with a single person, especially with one who was an officer of the garrison, and subject to the command of the military Governor, and upon that account the more improper; and therefore it had been proposed that persons should be expressly appointed by His Majesty's commission to be judges, who understood the law and were qualified for the regular execution of justice, with competent salaries for their trouble, which might be defrayed by the revenues of the place.

The Attorney and Solicitor-General stated that the said commission had been passed at the instance of the said Mr. Hayles, upon a particular occasion, which was represented in a very pressing manner to require great despatch, in order to the recovering of certain debts then in danger of being lost; but they admitted the validity of the objection to the tribunal, and said that it might be proper that persons should be expressly named judges in the very commission, who might be more particularly qualified for the administration of civil justice. They also expressed themselves favourable to the establishment of some form of civil government, and then said "Upon this information we have made the best inquiry we could whether by the



articles of surrender or any treaties, declarations, or other public acts ratified by the crown of Great Britain, any legal provision has been made, or rules given for that purpose, and have been able to find none; and therefore we are humbly of opinion that, as a fundamental necessary to any form of civil government, without which courts of judicature will be in a manner useless, and for the quieting of the inhabitants in their possessions, some settlement ought to be made of the property in the houses and lands within this town and territories." They then remarked upon the evil of the absence of any but martial law, and with a view to the framing of a scheme pursuant to their lordships' order, they referred to the charter granted to Jamaica and to the commissions issued in the cases of Jamaica and the Caribbee Islands. They then took the charter to Tangiers as their model, and gave the following brief but curious account of the government established in that place while it was in the possession of England during the reign of Charles II.:—"As to Tangiers, the method then taken was thus, viz. by letters-patent dated the 20th April, 1668, the town was declared to be a free city, all the inhabitants (being Christians) were incorporated by the name of mayor, aldermen, and commonalty, with a recorder and twelve common councilmen; out of the mayor, recorder, and aldermen was constituted a Court of Record for determining civil causes, and a Court of Oyer and Terminer for criminal matters, with a general jurisdiction (except as to persons in actual pay in the garrison.) Besides which a particular court is erected for mercantile causes, and all proceedings were directed to be according to the laws of England, as near as the condition of the place and safety of the inhabitants would permit." The report concluded with observing that "the objection made to the court already established being only with regard to the persons thereby appointed judges, we are humbly of opinion, that if proper persons are expressly nominated judges by His Majesty in the commission itself, the present form may in other parts thereof not be improper."—1 Chal. Opin. 169 to 181.

The result of this report seems to have been that the nomination of the judge was afterwards made by the King's commission, in the manner recommended; certainly no new charter of justice was then issued, for the report of the Attorney and Solocitor-General is dated

14th December, 1722, and the only charter granted by Geo. 1, was issued in the previous year, namely, upon the 4th of November, in the seventh year of his reign. Another charter of justice was granted by Geo. 2, on the 10th of May, in the thirteenth year of his reign, and then another on the 1st of August, in the twenty-sixth year of his reign, making some alterations in the courts established by the two former charters, but in other respects confirming them. A new charter of justice was granted by Geo. 3, on the 12th May, in the fifty-seventh year of his reign, in which the three former charters were repealed, and which then constituted a court of judicature called by the name of the Court of Civil Pleas, to consist of one person learned in the laws of England to be appointed by the crown and to hold office during pleasure, such person to be called the Civil Judge, or the Judge of the Court of Civil Pleas at Gibraltar. This person, with two resident inhabitants, to be appointed by him during his pleasure, was to determine all suits, real and personal, (where the matter in dispute was not less than 10 dollars,) that might arise within the garrison, according, as nearly as might be, to the laws of England. The court was also to hold pleas of foreign attachment, to grant probates of wills and administration of the estates of intestates. From this court an appeal was to lie to a court called "The Court of Appeals," which was to consist of the Governor for the time being, and of the Judge-Advocate for the time being, who was to act as the Governor's assessor. Debts not exceeding 10 dollars were to be recovered before the Judge-Advocate and the Civil Judge, one of whom was to sit one day in each week, and "severally to have full power, &c." to summon the defendant, and upon the examination on oath of the parties themselves and other witnesses, to decide the disputed demand. The Governor, the Judge-Advocate, the Judge of the Court of Civil Pleas, and one inhabitant nominated by the crown, were all appointed Justices of the Peace for the town and territory of Gibraltar. The Governor and Judge-Advocate were to constitute a court of criminal jurisdiction, to be called the Court of General Sessions, with power to try all offences except treason or misprision of treason, unless the offender was in actual pay as a soldier. The jurors were "to be taken out of the inhabitants, including the garrison." The Judge-

Advocate was appointed sitting magistrate for the town and territory of Gibraltar, and was directed to hold a Petty Sessions on Monday and Thursday in every week for all matters of police. The Judge-Advocate and the Judge of the Court of Civil Pleas were directed to hold Quarter Sessions. This court was to have power to inquire of and determine all "misdemeanors, nuisances, assaults, offences, and felonies, (except such as are punishable by death or transportation,)" unless the offender was in actual pay in the garrison. The Court of Quarter Sessions was to be assisted in criminal cases by grand and petty juries, but might determine appeals against rates without the intervention of a jury. In the last matter the judgment of the Court of Quarter Sessions was not to be subject to any appeal whatever. In case of the death of the Judge-Advocate, the Governor might appoint the Judge of the Civil Court to act in his stead as Judge of the Court of General Sessions, and as sitting magistrate for the town and garrison of Gibraltar, till the King's pleasure was known; and in case of the death, &c. of the Judge of the Civil Court, the Judge-Advocate might, in like manner, be appointed to supply his place. The courts thus constituted were abolished, and a new system of judicature established by a Charter of Justice dated 1st September, 1830. (See post, 680.)

A commission was issued for the trial of pirates, under the authority of the 46 Geo. 3, dated on the 26th April, 1815, and was directed to the Governor, the Commissioner for Naval Affairs, the Judge-Advocate, the Civil Secretary, and the Commander of the Naval Forces at Gibraltar for the time being, (the last not being under the rank of post captain,) and also to all admirals and captains, and commanders of the ships of war within the port, (not under the rank of post captain,) "to inquire, upon the oath of good and lawful men of our said town and garrison, and by other ways," into all treasons, piracies, murders, &c. committed on the sea, "according to the laws and customs of this our realm, and the statutes in that behalf made and provided, as the same might have been heard and determined within this our realm."

It would seem that this commission is still in force, for the Charter of Justice of September, 1830, does not even allude to it, nor has the Supreme Court established by that charter any right to try offences committed at sea.

## LAWS. (3)

The laws of England prevail at Gibraltar, so far at least as they are applicable to the circumstances of the colony. The new Charter of Justice directs, as did those which preceded it, that the courts established at Gibraltar shall administer the law, as nearly as may be, according to the practice at Westminster-Hall.

## GOVERNMENT.

In matters relating to the civil government, Gibraltar is still treated as a garrison town. The Governor is at once the sole legislative and executive authority. His authority in the former capacity, however, is very limited. The laws of England are administered by the courts, and any alterations which it may be deemed necessary to make in them are usually made by Orders in Council.

## GIBRALTAR—CHARTER OF JUSTICE.

1st September, 1830.

WILLIAM THE FOURTH, by the grace of God, of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to all to whom these presents shall come, greeting: Whereas our royal father and predecessor King George the Third, by letters-patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the twelfth day of May, in the fifty-seventh year of his reign, did erect and constitute a court of judicature within the garrison and territory of Gibraltar, to be called by the name of the Court of Civil Pleas at Gibraltar: And whereas by the said letters-patent provision was made for the administration of justice in the said garrison and territory, and it was thereby declared that the said letters-patent should be and remain in force only until his said late Majesty, his heirs, and successors should be pleased to alter, revoke, or determine the same: And whereas it is expedient that the said letters-patent be revoked: Now know ye, that we have revoked, and do hereby revoke, the before mentioned letters-patent and every part thereof.

And whereas it is expedient that provision be made for the better

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(3) See ante, p. 3 to 16, on the general topic, how far the colonies are subject to the law of the mother coun-

try. On the subject of Gibraltar particularly, see p. 15, n. (5).

and more effectual administration of justice in our garrison and territory of Gibraltar, and for that purpose one Supreme Court of Justice, to be holden therein in the manner and form hereinafter mentioned, should be constituted: Now know ye, that we, of our special grace, certain knowledge, and mere motion, have thought fit to grant, direct, order, and appoint, and by these presents do accordingly for us, our heirs, and successors, grant, direct, order, and appoint that there shall be within our said garrison and territory a court which shall be called "The Supreme Court of Gibraltar;" and we do hereby create and constitute the said Supreme Court a Court of Record. And we do further will, ordain, and appoint that the said Supreme Court of Gibraltar shall consist of, and be holden by and before one judge, to be called the "Judge of the Supreme Court of Gibraltar;" and that the said judge shall be a barrister in England or Ireland of not less than three years standing, or an advocate admitted to practise in our Court of Session in Scotland by the space of three years; and the said judge shall from time to time be nominated and appointed to such his office by us, our heirs, and successors, by letters-patent under the great seal of the United Kingdom of Great Britain and Ireland: And we do hereby declare, ordain, and grant, that, upon the death, resignation, or sickness, or incapacity of the said judge, or in case of his absence from the said garrison and territory, or in case of any such suspension from office as hereinafter mentioned of any such judge, it shall and may be lawful to and for the Governor of our said garrison and territory for the time being, by any instrument to be by him for that purpose made and issued under the public seal of the said garrison and territory, to nominate and appoint some fit and proper person to act as and in the place and stead of any such judge so dying or resigning or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from the said garrison and territory, or being so suspended, until the vacancy so created by any such death or resignation, or sickness, or incapacity, or absence, or suspension, shall be supplied by a new appointment, to be made in manner aforesaid, by us, our heirs, and successors, or until the judge so becoming sick or incapable, or being absent or suspended as aforesaid, shall resume such his office and enter into the discharge of the duties thereof: And we do further will, ordain, and grant that the said judge shall hold such his office during our pleasure: Provided nevertheless that it shall and may be lawful for the Governor of our said garrison and territory for the time being, by any order to be by him for that purpose made and issued under the public seal of the said garrison and territory, upon the proof of the misconduct of any such judge as aforesaid, to suspend him from such his office and from the discharge of the duties thereof: Provided that, in every such case, the said Governor shall immediately report for our information, through one of our princi-

pal Secretaries of State, the grounds and causes of such suspension. And we do further grant, ordain, and appoint that the said Supreme Court of Gibraltar shall have and use, as occasion may require, a seal bearing a device and impression of our royal arms within an exergue or label surrounding the same, with this inscription, "The Seal of the Supreme Court of Gibraltar:" And we do hereby ordain, grant, and appoint that the said seal shall be delivered to and shall be kept in the custody of the said judge; and in case of vacancy of or suspension from the office of judge, the same shall be delivered over to and kept in the custody of such person as shall be appointed by the said Governor of our said garrison and territory to act as and in the place and stead of the said judge: And we do further grant, ordain, and declare that the said judge, so long as he shall hold his office, shall be entitled to and have and receive such salary as shall be granted to him by us, our heirs, and successors, and that such salary shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fee of office, perquisite, emolument, or advantages whatsoever other than and except the said salary shall be accepted, received, or taken by any such judge on any account or on any pretence whatsoever. And we do further ordain, appoint, and declare that no such judge as aforesaid shall be capable of accepting, taking, or performing any other office or place of profit or emolument within our said garrison and territory, on pain that the acceptance of any such other office or place as aforesaid shall be and may be decreed in law, *de facto*, an avoidance of such his office of judge; and the salary thereof shall cease and be deemed to have ceased accordingly from the time of the acceptance of any such other office or place.

And we do hereby constitute and appoint our trusty and well-beloved Barron Field, Esquire, to be the First Judge of the Supreme Court of Gibraltar: And we do hereby ordain, appoint, and declare that there shall be attached and belong to the said court such and so many officers as to the judge of the said court for the time being shall, from time to time, appear to be necessary for the administration of justice and the due execution of the powers and authorities which are granted and committed to the said court by these our letters-patent: Provided nevertheless, that no new officer shall be created in the said court unless the Governor of the said garrison and territory shall first signify his approbation thereof to the said judge for the time being, in writing, under the hand of such Governor. And we do further ordain and direct that all persons who shall and may be appointed to the offices of Registrar or Prothonotary, and Master or Keeper of Records, or Marshal of the said court, and that all persons who shall be appointed in the said court to any offices to which the duties shall correspond to those performed by the Master or Prothonotary of any or either of our Courts of Record at Westminster, or to the Sheriff of any county in England, shall be so

appointed by us, our heirs, and successors, by warrant under our or their royal sign manual; and that all persons who shall and may be appointed to any other office within the Supreme Court shall be so appointed by the Governor for the time being of the said garrison and territory. And we do further direct and appoint, that the several officers of the said court shall hold their respective offices during our pleasure. And we do hereby authorize and empower the said Supreme Court of Gibraltar to approve, admit, and enrol, as barristers, advocates, solicitors, and attorneys, any persons who have been admitted as barristers in England or Ireland, or as advocates in the Court of Session of Scotland, or to the degree of Doctor of Laws at our Universities of Oxford, Cambridge, or Dublin, or as attornies or solicitors of any of our Courts of Record at Westminster or Dublin, or as doctors in any Ecclesiastical Court in England or Ireland, or as writers to the signet in Scotland, and any persons who have been at any time heretofore admitted to practise as advocates, barristers, attornies, solicitors, or proctors in the Court of Civil and Criminal Justice heretofore existing in our said garrison and territory. And we do further authorize our said Supreme Court to approve, admit, and enrol, as such attornies, solicitors, or proctors as aforesaid, such and so many persons as may be instructed, within our said garrison and territory, in the knowledge and practice of the law, by any barrister, advocate, attorney, solicitor, or proctor duly admitted to practise in the said court; and which persons shall be so approved, admitted, and enrolled, according to and in pursuance of any general rule or rules of court to be for that purpose made in manner hereinafter directed. And we do ordain and declare, that persons approved, admitted, and enrolled as aforesaid, shall be and they are hereby authorized to appear and plead and act for the suitors of the said Supreme Court, subject always to be removed by the said Supreme Court from their station therein, upon reasonable cause. And we do further ordain, that no person or persons whatsoever, not so approved, admitted, and enrolled as aforesaid, shall be allowed to appear, plead, or act in the said Supreme Court, for or on behalf of any suitors in the said court. And we do hereby further ordain, direct, and appoint, that the said Supreme Court of Gibraltar shall have cognizance of all pleas and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the said garrison and territory, with jurisdiction over all our subjects and all other persons whomsoever residing and being within the said garrison and territory, save as hereinafter is excepted. And we do further give and grant to the said Supreme Court of Gibraltar full power, authority, and jurisdiction to judge and determine all questions there arising, according to the laws now in force within our said garrison and territory, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof, by us, our

heirs, and successors, with the advice and consent of Parliament, or in our or their Privy Council, or by the Governor of Gibraltar for the time being. And we do further give and grant to the said Supreme Court full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within our said garrison and territory, and, if necessary, to set aside or correct the same. Provided always that nothing herein contained shall extend or be construed to give to the said Supreme Court any authority to review the proceedings of any court martial holden within the said garrison and territory. And we do further ordain, direct, and appoint, that, in any criminal case depending before the said Supreme Court, the trial of the party or parties accused shall be before the judge of the said court and a jury of twelve men, who shall concur in every verdict to be given on the trial of any such accused party or parties; and every such verdict shall be delivered in open court by the mouth of the foreman of every such jury, and shall be thereupon recorded and read over to such jury before they are discharged from attendance on the said court. Provided also, and we do further direct and appoint, that all issues of fact arising in civil suits or actions depending in the said court, shall be tried and decided by the said judge and three assessors, to be appointed as hereinafter mentioned, until otherwise provided for by law; and that the verdict of the said judge and assessors on the trial of any such issue shall be according to the majority of votes; but if such votes should be equally divided, then according to the opinion of the said judge; and every such verdict shall be delivered in open court by the mouth of the said judge. And in all cases where the sum or matter at issue in any such suit or action shall exceed or be of the value of more than £100 sterling, British money, the said judge shall cause the evidence on every such trial as aforesaid to be taken down in writing by the clerk or other proper officer in open court, in the presence of the witnesses respectively giving the same, and the evidence so taken shall be entered upon the proceedings of the said court and be of record; and in every case in which any appeal shall be made and allowed under the provisions of this our charter, from any judgment of the said court, copies of all documents and papers which shall have been produced and given in evidence, shall be certified and transmitted by the said clerk or other proper officer as authentic; and also copies of any documents and papers which shall have been produced and tendered in evidence and rejected, shall, if required by the party producing the same, be in like manner authenticated, but marked by such officer as aforesaid as rejected, in order that all such copies may be annexed to the record as part thereof in case of appeal. And we do further direct and declare, that it shall be lawful for the judge, on the application of either of the parties, plaintiff or defendant, at or before the trial of any issue joined



in any civil suit or action commenced in the said court, to permit the evidence on such trial to be recorded and certified as aforesaid, although the sum or matter at issue may be less than £100 sterling; provided that it shall be made to appear to such judge that such judgment, decree, order, or sentence, which may be given, made, or pronounced in such suit or action, may be of such importance as to render it proper that an appeal should be permitted. And we do further ordain and direct, that no judgment or sentence of the Supreme Court, in any criminal case, whereby any person shall be condemned to death or transportation, or banishment from the said garrison and territory, shall be carried into execution until a report of all the proceedings upon any such trial hath been laid before or transmitted to the Governor of the said garrison and territory by the judge presiding at any such trial, and until such Governor shall have authorized and approved the execution of such sentence. Provided always, that no officer, soldier, or other person in actual pay as a member of the garrison, shall be arrested, imprisoned, or taken in execution, without leave of the Governor of the said garrison and territory first obtained in writing for that purpose. Provided always, and we do hereby further will and declare, that in case any action or suit shall be begun, instituted, or prosecuted against any officer, soldier, or other person, in pay as a member of our garrison, to recover damages for any trespass, assault, battery, or other violence or wrong committed, or alleged to have been committed, by him or them, or for any damage or injury whatsoever, not being a matter of debt, account, or contract, or relating to any right or title to any lands, houses, tenements, or hereditaments, or any interest therein, it shall be lawful for the Governor for the time being of the said garrison and territory, at his discretion, by order under his hand, to suspend such proceeding, and to order the staying thereof at any time before judgment, or to stay and suspend any execution from issuing upon any such judgment; and upon delivery of such order to the registrar of the said court, or to the person acting as registrar of the said court, all such proceedings shall cease and be stayed until such order shall be revoked by the Governor for the time being, saving to the plaintiff or plaintiffs, in any such action or suit, all such suits and remedies as he, she, or they may be or would have been entitled to institute in England or elsewhere out of the said garrison and territory of Gibraltar, if the said action or suit, so stayed, had not been there commenced. And we do hereby also further ordain and direct, that in cases in which any officer, soldier, or other person in actual pay as a member of the garrison shall have been arrested, imprisoned, or taken in execution, with the leave of the Governor as aforesaid, it shall be nevertheless lawful for the Governor for the time being, by an order in writing signed by him, afterwards to order and direct, that such officer, soldier, or other person shall be dis-

charged from such arrest, imprisonment, or execution; and the officer or gaoler, in whose custody such officer, soldier, or other person shall happen to be, is hereby authorized, empowered, and commanded forthwith, upon the receipt of such order, to discharge him out of custody. And we do hereby ordain and direct, that such discharge under such order shall not be deemed an escape from the custody of such officer or gaoler, but that such order of discharge shall be and be taken to be an indemnity to such officer or gaoler for such discharge. And we do hereby further ordain and direct, that in all such cases the Governor for the time being who shall have signed such order of discharge, shall forthwith state and deliver, in writing, to the said judge, his reasons for having issued such order of discharge, and shall transmit a copy thereof to us through one of our principal Secretaries of State. Provided always, that such discharge from imprisonment shall in no degree release the party so discharged from the debt on account of which his body had been taken in execution. And we do further grant, ordain, direct, and appoint, that it shall and may be lawful for the said judge, by any rules or orders of court to be by him from time to time for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations as to him shall seem meet, touching and concerning the time and place of holding the said Supreme Court, and touching the forms and manner of proceeding to be observed in the Supreme Court, and the practice and pleading upon all actions, suits, and other matters, both civil and criminal, indictments and informations to be therein brought, the appointing of commissioners to take bail and examine witnesses, the examination of witnesses *de bene esse* and allowing the same as evidence, the proceedings of the marshal and other ministerial officers of the said court, the process of the said court and the mode of executing the same, the fees and emoluments to be demanded and taken by the advocates, attornies, and officers of the said court, the summoning, impannelling, and challenging of juries, the admission of barristers, advocates, attornies, solicitors, and proctors in the said court, and touching and concerning all such other matters and things necessary for the proper conduct and despatch of business in the said Supreme Court; and all such rules, orders, and regulations from time to time to revoke, alter, amend, or renew, as occasion may require. Provided always, that no such rules, orders, and regulations shall be repugnant to this our charter, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the despatch of the business of the said Supreme Court; and that all such rules and forms of practice, process, and proceeding shall, so far as the circumstances of the said garrison and territory may permit, be framed with reference to the corresponding rules and forms in use in our Courts of Record in Westminster; and that the same be drawn up in plain succinct, and com-

pendious terms, avoiding all unnecessary repetitions and obscurity, and promulgated in the most public and authentic manner in the same garrison and territory for three months at least before the same shall operate and take effect. Provided always, that all such rules, orders, and regulations shall forthwith be transmitted to us, our heirs, and successors, under the seal of the said court, for our or their approbation, correction, or disallowance. And whereas it may be expedient and necessary to make provision respecting the qualification of jurors and assessors to serve in the said court, and the mode of enforcing the attendance of such jurors and assessors; and it may also be expedient and necessary to make provision for the extension of trial by jury in the said Supreme Court, in civil cases: Now we do further ordain, direct, and appoint, that it shall and may be lawful for the Governor for the time being of our said garrison and territory to make and establish all such laws, statutes, and ordinances as to him may seem meet, respecting the matters aforesaid, which laws, statutes, and ordinances shall forthwith be transmitted to us for our approbation, correction, or disallowance. And whereas it may be expedient to establish within our said garrison and territory Courts of Request, and other courts having jurisdiction in civil cases of small amount or value, and in cases of crimes or offences not punishable with death, transportation, or banishment: Now we do hereby authorize and empower the Governor for the time being of our said garrison and territory, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish all such Courts of Request and other courts having jurisdiction in civil and criminal cases within our said garrison and territory: Provided that the jurisdiction of such civil courts shall not be extended to any case wherein the sum or matter in dispute shall exceed the amount or value of £40 sterling money, or wherein the title to any lands or tenements, or any fee, duty, or office may be in question, or whereby rights in future may be bound; and provided also that the jurisdiction of such courts in criminal cases shall not be extended to any case wherein any person may be accused of any crime punishable by death, transportation, or banishment from the said garrison and territory. And we do hereby authorize and empower the said Governor, by and with the advice of our said judge for the time being, to make, ordain, and establish all necessary rules, orders, or regulations respecting the manner and form of proceeding, and the mode of trial of offenders in any such last-mentioned courts, and respecting the manner and form of carrying the judgments and orders of such courts into execution, and all such other rules, orders, and regulations as may be necessary for giving full and perfect effect to the jurisdiction of the said courts. And we do hereby grant, ordain, and direct, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit or action de-

pending in the said Supreme Court of the garrison and territory of Gibraltar, to appeal to us, our heirs, and successors, in our or their Privy Council, against any final judgment, decree, or sentence of the said court, or against any rule or order made in any such civil suit or action having the effect of a final or definitive sentence; and which appeals shall be made subject to the rules, regulations, and limitations following, that is to say, in case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £300 sterling, or in case such judgment, decree, order, or sentence shall involve, directly or indirectly, any claim, demand, or question to or respecting property, or any civil right, amounting to or of the value of £300 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said Supreme Court, may, within fourteen days next after the same shall have been pronounced, made, or given, apply to the said Supreme Court, by petition, for leave to appeal therefrom to us, our heirs, and successors, in our or their Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money, or perform any duty, the said Supreme Court shall and is hereby empowered to direct that the judgment, decree, order, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may in each case appear to be most consistent with real and substantial justice. And in case the said Supreme Court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order, as we, our heirs, and successors shall think fit to make thereupon; or in case the said Supreme Court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given shall in like manner, and before any order for the suspension of any such execution is made, enter into good and sufficient security, to be approved by the said Supreme Court, for the due performance of such judgment or order as we, our heirs, or successors shall think fit to make thereupon; and in all cases we will and require that security shall also be given by the party or parties appellants, to the satisfaction of the Supreme Court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded by us, our heirs, and successors, to the party or parties respondent; and if such last-mentioned security shall be entered into within three months from the date of such petitions for leave to appeal, then, and not otherwise, the said Supreme Court shall allow the ap-

peal, and the party or parties appellant shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs, and successors, in our or their Privy Council, in such manner and under such rules as are observed in appeals made to us from our plantations or colonies. And we do hereby reserve to ourselves, our heirs, and successors, in our or their Privy Council, full power and authority, upon the humble petition at any time, of any person or persons aggrieved by any judgment or determination of the said Supreme Court, to admit his, her, or their appeal therefrom, upon such other terms, and upon and subject to such other limitations, restrictions, and regulations as we or they shall think fit; and to reverse, correct, or vary such judgment or determination as to us or them shall seem meet. And it is our further will and pleasure that in all cases of appeal allowed by the said Supreme Court, or by us, our heirs, and successors, the said court shall certify and transmit to us, our heirs and successors, in our or their Privy Council, a true and exact copy of all evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court. And we do further direct and ordain that the said Supreme Court shall, in all cases of appeal to us, our heirs, or successors, conform to and execute such judgments and orders as we or they shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal order, or rule of the said Supreme Court of the garrison and territory of Gibraltar could or might have been executed. And we do hereby strictly charge and command all Governors, Commanders, Magistrates, Ministers, civil and military, and all our liege subjects within and belonging to the said garrison and territory, that, in the execution of the several powers, jurisdictions, and authorities hereby granted, made, given, or created, they be aiding and assisting and obedient in all things, as they will answer the contrary at their peril. Provided always that nothing in these presents contained, or any act which shall be done under the authority thereof, shall extend or be construed to extend to prevent us, our heirs, and successors from revoking these presents or any part thereof, or from making such further or other provision, by letters-patent, for the administration of justice, civil and criminal, within the said garrison and territory, and the places now or hereafter at any time to be annexed thereto, as to us, our heirs, and successors shall seem fit, in as full and ample a manner as if these presents had not been made, these presents or any thing therein contained to the contrary in anywise notwithstanding. And we do further ordain and direct that the Governor of our said garrison and territory, upon the arrival therein of these presents, shall by proclamation notify to the inhabitants of the said garrison and territory the time when the said courts hereby established will be open; and as soon as

the Judge of the said Supreme Court shall have assumed and entered upon the exercise of his jurisdiction therein, then and from thenceforth the Court of Civil Pleas now established within the said garrison and territory, and the Court of Appeals now established within the same, and all other courts, civil and criminal, shall be absolutely abolished, cease, and determine; and every suit, action, complaint, matter, or thing, civil and criminal, which shall be depending in such last-mentioned courts respectively, shall and may be proceeded upon in the Supreme Court instituted under and by virtue of these presents; and all proceedings which shall hereafter be had in such action or suit, or other matter, civil or criminal, respectively, shall be conducted in like manner as if such action or suit, or other matter, civil or criminal, had been originally commenced in the said Supreme Court instituted under these presents: and all the records, muniments, and proceedings whatsoever, of and belonging to the said Courts of Civil and Criminal Justice, and to the said Court of Appeals respectively, shall, from and immediately after the opening of the said Supreme Court instituted by these presents, be delivered over to and deposited for safe custody in such place, and be thereafter kept by such person as our Governor shall appoint; and all parties concerned shall and may have recourse to the said records and proceedings, as to any other records and proceedings of the said court. And we do hereby further declare and direct, that during the absence from our said garrison and territory of the Governor thereof, or if there shall be no person commissioned by us, our heirs, and successors to be the Governor of our said garrison and territory, then, and in every such case, all and every the powers hereby granted to and vested in the Governor for the time being of the said garrison and territory, shall and may be executed by and vested in the Lieutenant-Governor thereof, or the officer for the time being having command of the troops. In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster the first day of September in the first year of our reign.

By Writ of Privy Seal.

BATHURST.

ORDER IN COUNCIL—BANKRUPTCY.

An Order in Council was passed on the 12th October, 1832, to confirm an ordinance made by the Lieutenant-Governor of the garrison of Gibraltar, on the 19th September, 1832, "in exercise of the powers vested in him in that behalf by His Majesty's commission," by which ordinance he "made provision" for putting in force within the garrison and territory of Gibraltar the laws of England relating to bankrupts.

This ordinance, in the first section, recited the expediency of putting in force these laws, and then declared them to be in force within the garrison and territory of Gibraltar.

The second section declared "that all the powers by the said laws of England relating to bankrupts given to, and duties thereby directed to be performed by the Lord Chancellor, the Court of Bankruptcy, and the Court of Review, or by any Judge or Judges of the said courts, save where such judge is authorized to exercise the powers given by the said laws to any Commissioners of the Court of Bankruptcy, shall and may be exercised and performed by the Supreme Court of Gibraltar."

The third section declares that the commissioners (not exceeding three in number) are to be appointed by the person exercising the government, and "that all the powers by the said laws given to, and duties thereby directed to be performed by any one or more Commissioner or Commissioners of the Court of Bankruptcy, shall and may be exercised or performed by the person or persons so appointed a Commissioner or Commissioners of Bankrupt, in manner above mentioned; and all the powers by the said laws given to, and all the duties thereby directed to be performed by a sub-division court consisting of three commissioners, shall and may be exercised and performed by one Commissioner of Bankrupt, provided there be not more than one Commissioner competent to act, or by two Commissioners, provided there be not more than two Commissioners competent to act under and by virtue of the appointment and commission hereinbefore mentioned. Provided always, that no single Commissioner shall have power to commit any bankrupt or other person examined before him otherwise than to the care and custody of a messenger or other officer of the Supreme Court, to be by him detained in his custody and to be brought up before a Sub-division Court or the Supreme Court within three days after such commitment, for which purpose one of such courts shall be forthwith summoned, and to which court such examination shall be adjourned."

Any barrister, attorney, or solicitor appointed a Commissioner may still continue to practise, "provided always, that no person shall act as a Commissioner of Bankrupt and as a barrister, solicitor, or attorney in one and the same cause, matter, or thing."

The duties of the Secretary of Bankrupts, Master in Chancery, and Registrars of the Court of Bankruptcy are to be performed by the Registrar of the Supreme Court, or other person appointed by the Governor.

The persons to be appointed official assignees are to be merchants, brokers, or accountants, or persons who are or have been engaged in trade in the cities of London, Westminster, Liverpool, or Bristol, or in the garrison and territory of Gibraltar, "and in all cases in which any part of the estate and effects of any bankrupt shall be required to be

transferred, delivered, or paid by the official assignee into the Bank of England or elsewhere, or to be set apart in the hands of the Accountant-General of the High Court of Chancery, such estate and effects shall be retained in the hands of the official assignee or otherwise, and shall in all respects be subject to such order, rule, and regulation for the keeping of the account of the said estate and effects, and for the custody, investment, payment, or other disposition thereof, as the Judges of the Supreme Court of Gibraltar shall from time to time think fit to direct."

By the sixth section no person is liable to become a bankrupt unless he be a natural born subject of His Majesty, or have resided two years in Gibraltar.

The seventh and eighth sections relate to fees to be paid to the Registrar.

By the ninth section "all issues directed or allowed by the said laws relating to bankrupts, for the trial of every matter of fact by a jury, shall be tried by the said Judge of the Supreme Court and three Assessors, or by the said Judge and a jury of twelve men, in the same manner and under and subject to all and singular the provisions and conditions established and in use for the trial of other issues of fact by the said Supreme Court."

By the tenth section "all appeals from any final judgment, decree, or sentence of the Supreme Court, touching any matter relating to bankrupts, or against any rule or order made in any such matter having the effect of a final or definitive sentence, shall be to His Majesty, his heirs, and successors, in his or their Privy Council, subject to the rules, regulations, and limitations prescribed by His Majesty's letters-patent bearing date at Westminster on the 1st day of September in the first year of his reign, for appeals against any final judgment, decree, or sentence of the Supreme Court, or any rule or order having the effect of a final or definitive sentence."

The limitations as to time fixed in certain instances by the bankrupt laws of England, are by sec. 11, adopted with them at Gibraltar.

The general rules and orders "made by the Judge of the Supreme Court of Gibraltar, under and by virtue of the said laws relating to bankrupts," shall be forthwith transmitted to His Majesty for his approbation.

By the thirteenth section "all the rights, privileges, and powers used, exercised, and enjoyed by any of His Majesty's Courts at Westminster, or by any Judge or Judges thereof, relating to bankrupts, shall and may be used, exercised, and enjoyed by the Supreme Court of Gibraltar, except as it is by this ordinance otherwise provided."

By the fourteenth section "a publication in the Gibraltar Chronicle shall be deemed and taken to be a publication in the London Gazette



or any other newspaper, for all the purposes of the said laws relating to bankrupts."

By the fifteenth section this ordinance was not to take effect till His Majesty's pleasure was known.

On the 12th October, 1832, it received His Majesty's confirmation.

### *Practice of the Courts.*

The rules and regulations of the Supreme Court recite the Charter of Justice of the 1st September, 1830, by which the Supreme Court was established and was invested with jurisdiction in all causes, civil, criminal, or mixed, with power to review the proceedings of all inferior courts of justice; and also letters-patent of the 2d March, 1832, by which the court was invested with jurisdiction in all testamentary cases, and in all cases of the administration of intestates' estates; and also the Order in Council of the 12th October, 1832, by which the court was invested with the power of the Lord Chancellor in matters relating to bankrupts. They then declare that, in pursuance of the directions contained in the Charter of Justice, the following rules and regulations have been established:—

*Terms.*—There shall be three terms in each year, the court to sit at least every Tuesday during the continuance of each of the terms.

The first term is to continue during the months of January, February and March; the second during those of May and June; and the third during those of September, October and November.

There must be at least two criminal sessions in each year, to commence on or about the 1st of June and the 1st of December in each year.

The court may also sit in vacation if business shall require it.

The civil practice of the court, whether in its legal or equitable jurisdiction, shall be simply by petition, answer, or demurrer; and (if necessary) replication and joinder in demurrer, and rejoinder, addressed to the honourable the Judge of the Supreme Court.

In the equitable proceedings of the same court the proceedings are to be as in England, except that witnesses are to be examined and cross-examined *viva voce*.

*Judgments.*—The party in whose favour any final judgment, decree, or sentence of the court, in any civil action or suit, has been given, where by law there can be no appeal to His Majesty, or where there being such right of appeal, no application for such appeal is made within the time appointed for so doing, may at his own risk and without leave sue out execution.

Notice of the sale of property seized must be given at least one week before the sale in the Gibraltar Chronicle.

*Barristers.*—The practitioners in the Supreme Court shall appear and

plead indiscriminately as barristers, advocates, attornies, solicitors, and proctors, and every such person must be admitted, sworn, and enrolled by the court, upon petition stating his compliance with the regulations of the charter upon that subject, and his qualifications so to be admitted.

The fees of the practitioners are regulated by the Governor.

*Prosecutions*—The indictments and informations in this court shall be exhibited and filed or not by His Majesty's Attorney-General in his discretion; but any party may move the court for a criminal information according to the practice of the Court of King's Bench in England, or carry an indictment rejected by the Attorney-General before the grand jury, at his own cost and responsibility, agreeably to the practice of the Courts of Oyer and Terminer and General Gaol Delivery in England. The rest of the practice to be conformable to that which prevails in the before mentioned courts, as nearly as circumstances will permit.

The general rules made in the English courts under the act 11 Geo. 4, and 1 Wm. 4, c. 70, are adopted so far as they are not repugnant to the practice of the Supreme Court.

*Bankruptcy*.—The general rules and practice of bankruptcy in England are, by an order dated 15th February, 1833, made the rules and practice in the Bankruptcy Court at Gibraltar, and all future rules to be made by the Bankruptcy Court in England, so far as they are applicable, are to be the rules of the court at Gibraltar.

Persons are to be chosen to act as official assignees, and in each case the commissioner is to appoint the official assignee. Each official assignee is to give bond for the due performance of his office, himself in the sum of £600, and two sureties in sums to the like amount. He shall pay over to the registrar all such sums of money as shall come to his hands so soon as they shall amount to £100.

## HELIGOLAND.

HELIGOLAND is an island which lies on the coast of Holstein, at nearly an equal distance from the mouths of the Jahde, the Weser, the Elbe, the Eider, and the Hever. It is said by some to derive its name, which signifies Holy Island, from its having been the seat of the worship of the goddess Phoseta, who was adored by the Sicambri, while others suppose the name originated in the early conversion of the island to Christianity. It draws nearly its whole supply of provisions from the main land, except when a flight of thrushes, snipes, larks, or woodcocks happens to alight upon the island, and then the inhabitants immediately commence the destruction of them, and forget every other occupation so long as the game is to be found. Even if assembled in church when the game arrive, the congregation rush out immediately with their pastor at their head, and this sport of necessity is begun without delay.

The island is sub-divided into the Cliff and Lowland, the smaller island called the Down, and several sand banks and rocks, of which that called the Monk is the most conspicuous. The Cliff is a continued rock of sandstone almost perpendicular, the ascent to which is by a long flight of steps, and its circumference is about 4000 paces. The Cliff is said to be constantly diminishing from the action of the waves, and the Lowland to be as constantly increasing. They are joined together by a bottom of rock about 500 paces long. The circuit of the whole island does not exceed two miles and a half. Heligoland has two good harbours, and to the east of the Down is a road where vessels may anchor in forty-eight feet water. The inhabitants, in number above 2000, subsist chiefly by fishing and acting as pilots. The women cultivate barley and oats and attend to the few sheep that are fed on the pastures of the upper grounds. The public buildings are placed on these upper grounds; on the lower grounds there are only fishermen's huts. There are two wells of

fresh water, but scarcely a tree or a shrub of any kind on the island. Turf, wood, fuel, and garden vegetables are brought from Cuxhaven and Hamburgh in exchange for fish.

The island formerly belonged to the crown of Denmark, but was taken from the Danes by a small squadron in September, 1807, and converted into a depot for the merchandise, which, in spite of Napoleon's decrees of exclusion, was smuggled into every part of the continent. At the general peace it was retained by England. The Governor and garrison have been withdrawn since the war, and a commandant only resides there as the British consul. The people govern themselves.—Edin. Gazette, Ency. Brit. Supp. and Ency. Metr.

## JERSEY.



THE Island of Jersey is the most easterly of the islands in St. Michael's Bay, is situated between Cape la Hogue in Normandy and Cape Forhelles in Brittany. Its distance from Weymouth, the nearest port in England, is seventy-five miles, and from the nearest French ports seventeen miles. It is considered as for some purposes forming parcel of the county of Hants, and in ecclesiastical matters is incorporated with the see of Winchester.

The climate is exceedingly mild and the soil of a light but prolific quality.

The population is estimated at about 30,000. St. Helier's is the capital of the island.

St. Helier's possesses a public library, instituted at the expense of the Reverend Philip Falle, the historian of the island and one of the chaplains to Wm. 3. English is familiarly spoken, but the Norman French is still the language of the pulpit and of the courts of justice.

### HISTORY AND CONSTITUTION.

These islands became part of the dominions of England when William the Conqueror established himself on the English throne. The government is now vested in a Governor and Assembly. The Governor is appointed by the King, of whom he is the representative. His peculiar duty is to attend to the fortresses and the military defences of the island.

The assembly consists of the Bailiff and twelve jurats, the dean and eleven rectors, and the twelve high constables of the island, aided by His Majesty's Attorney and Solicitor-General. There is a slight difference in the number of votes as the body sits in the States of Deliberation or States of Election.

The States of Deliberation approach nearest to our Parliament, as they consider and decide all matters affecting the general weal, assess taxes, and inspect the public

accounts. The States cannot, except in cases of emergency, impose any new tax without previously obtaining the consent of the King.

The chief duty of the States of Election is to decide on contested returns of jurats, who are always chosen by the people. When a vacancy in the list occurs notice is duly issued to the district, and on Sunday, at the close of service, the rector states to the congregation the occasion which calls for the exercise of their elective franchise. A proper person is then put in nomination. When the return is contested the ultimate decision is left to this General Assembly, which differs from the deliberative body only in having a few additional popular votes.

#### CONVENTION OF THE ESTATES.

This Convention is composed of the jurats or courts of justice as the first and noblest body, the dean and clergy as the second, and the twelve high constables (one elected by each parish), as the representatives of the commons. The King's Procurator, the Viscount, and the King's Advocate, though they represent no estate, are also admitted *propter dignitatem*. This Convention cannot meet but upon summons by the Governor, who has a negative voice in it. The Bailiff is the speaker of the Convention. No estates can be held without at least seven of each body, and no foreigner preferred to a benefice in the island can be a member of the Convention till he is naturalized. By an order in Council of the reign of James I. (1619) it is ordered, that the states shall not meet except upon being convened by the Governor, "with this qualification, that if the Bailiff or justices shall require an assembly of the states, the Governor shall not defer it above fifteen days, except he have such cause to the contrary either in respect to the safety of the island or our special service otherwise, as he will answer to us or the Lords of our Council, whereof he shall give as present advice as possibly wind and weather may serve."

The great business of these states is to levy money for the public service, and in some other respects it assumes powers resembling those of the Parliament of England.—Falle, c. vii.; Ency. Metro.

The Bailiff is the chief officer of justice in the island, and holds immediately by patent from the King. He

acts in conjunction with the jurats, who are twelve in number.

The Jurats, who exercise duties of a mixed nature, being at once judges and legislators, are chosen by the people, one for each parish in the island. Falle (c. iv.) thus describes the election:—"Upon a vacancy the court issues a writ of election, fixing the day, which is always a Sunday, and appointing one from their own number to collect the votes. The writ is delivered to the minister, who, after divine service, reads it from the pulpit, setting out usually in a short speech the duties and obligations incumbent on those that aspire to that magistrature, and recommending the people to choose the man most fitted by his talents and virtues for such an office. The people give their votes at the church door as they go out, and he that has the majority throughout the island is declared duly elected. Without the verdict and opinion of these twelve the Bailiff cannot pronounce. In case of inequality of opinions, he is bound to follow the majority. But he has the choice betwixt opinions equal in number."

#### COURTS.

There is but one court of judicature, yet, because matters are of more or less moment, or require different methods of proceeding, this court is distinguished into four classes or courts. The first is called the Court of Inheritance, which is opened at the beginning of every term, and decides on questions arising in respect of real property. The second is the Court of Catel, or chattels and movables, in which actions upon simple contracts may be tried, but the principal business of which is the adjudication of *decrees*, or the legal settlements of claims upon insolvents. The third court is the Extraordinary Court, which was established to assist the Court of Catel, when the causes in that court became too numerous for it. The Extraordinary Court decides upon arrears of rent not exceeding ten years, arrests, distrainings, &c. &c. The fourth is the Saturday Court, which is also an extraordinary and subsidiary court, and properly but a branch of the former. In term time it is appointed principally for the King's causes, and out of term for causes of brevity which admit of no delay, as causes of admiralty,

causes between merchants, breaches of the peace, &c.—Falle's Account of Jersey, c. 4.

The officers of the court are the Procurator and Advocate, or the Attorney and Solicitor; the Viscount or Sheriff; the Greffier or Clerk; six Advocates or Solicitors at the bar; two Denunciators or Under-sheriffs, and an Usher.

The court is a royal court, having cognizance of all pleas, real, personal, mixed, and criminal, treason and some other *casus nimis ardui*(1) excepted, which are reserved to the King in Council.

Appeals may be brought before the Council from judgments or decrees, in matters of civil property above the value of 300 livres tournois. No appeal lies in criminal cases.

In criminal matters every crime is first investigated by a petty jury, seven of whom must concur to find a prisoner guilty. The prisoner is allowed an appeal from their decision to la Grand Enquete, which consists of twenty-four persons. Five votes out of this number is sufficient to acquit.

To decide questions relating to the inheritance of real property, the court must consist of five jurats at least, and in matters relating to chattels of the value of above 50 livres tournois of three jurats; and from these lies an appeal to the Court of Judgment, consisting of not less than seven members; and again from them, if the matter in dispute amount to 40s. of freehold, or £40 of personal property, to the King in Council. Up to the reign of Elizabeth the justices in eyre were sent annually or triennially to Guernsey and Jersey to hear appeals from the courts of ordinary jurisdiction. Commissioners were afterwards sent at intervals for the same purpose, and were invested also with extensive powers to examine the state of the law, supply defects, correct inaccuracies, and re-trench what the deliberate assembly deemed superfluous. This custom however ceased with the reign of James I.

The Ecclesiastical Court consists of a dean and eleven rectors presiding over the twelve parishes of the island. The dean is empowered to grant probate of wills, and to exercise the powers of a consistory court. The island was placed under the see of Winchester by Queen Elizabeth by an order in Council, dated 11th March, 1568.

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(1) Constit' Johannis Regis, Art. V.



## LAWS. (1)

Conformably to an Order in Council of the date of the 21st May, 1679, and communicated to the states on the 3d day of July following,

The laws and privileges of the island are confirmed as ancient and established, and no orders, warrants or letters of what nature soever, shall be of force in the island until after having been presented to the Royal Court in order to be there registered and published, and in case such orders, warrants or letters shall be found contrary to the charters and privileges of the said island or burthensome to it, the registration, execution and publication, may be suspended by the court until the case shall have been represented to His Majesty, and his good pleasure taken thereon. And as to acts of parliament in which the island is mentioned, and in which it is interested, they must be exemplified in form under the great seal of England, and sent into the said island and there enregistered and published, in order that the inhabitants may have knowledge thereof, that they may conform themselves thereto, and avoid the penalties of offending against them.—Code of Jersey, 159, 160.

The laws which govern these islands are the ancient customs of Normandy as contained in Le Grand Coutumier, or in La Somme de Mançel, municipal and local usages of the island, ordinances made by the Kings of England or by commissioners royal, and Orders in Council. No act of parliament affects these islands, unless they are particularly named therein.(2) The following account of the jurisdiction of the English courts in these islands is taken from Hale's History of the Common Law.

Mich. 42 Edw. 2, Rot. 45, *coram Rege*. A great complaint was made by petition against the Deputy-Governor of those islands for divers oppressions and wrongs done there. This petition was by the Chancellor delivered into the Court of B. R. to proceed upon it, whereupon there were pleadings on both sides; but because it appeared to be for things done and transacted in the said islands, judgment was thus given:—"Et quia negotiam prædict' in curia hic terminari non potest, eo quod juratores in-

(1) See ante, p. 3 to 16 on this subject.

(2) 4 Inst. c. 70, pp. 286, 287.

sulæ prædict' coram' justiciariis hic venire non possunt, nec de jure debent, nec aliqua negotia infra insula prædicta emergentia terminari non debent, nisi secundum consuet' insulæ prædictæ. Ideo recordum retrotraditur Cancellario ut inde fiat commissio Domino Regis ad negotia prædicta in insula prædicta audienda et terminanda secundum consuet' insulæ prædictæ."

And accordingly, 14th June, 1565, upon a report from the Attorney-General, and advice with the two Chief Justices, a general direction was given by the Queen and her Council, that all suits between the islanders, or wherein one party was an islander, for matters arising within the islands, should be there heard and determined.

But still this is to be taken with this distinction and limitation, viz. that where the suit is immediately for the King, then the King may make his suit in any of the courts here, especially in the Court of King's Bench. For instance, in a *quare impedit* brought by the King in B. R. here for a church in those islands, so in a *quo warranto* for liberties there; so a demand of redemption of lands sold by the King's tenant within a year and a day, according to the custom of Normandy; so in an information for a riot, or grand contempt against a governor deputed by the King. These and the like suits have been maintained by the King in this Court of King's Bench here, though for matters arising within those islands. This appears Paschæ, 16 Edw. 2, *Coram Rege*, Rot. 82; Mich. 18 Edw. 2, Rot. 123, 124, 125; and Pasc. 1 Edw. 3, Rot. 59.

And for the same reason it is, that a writ of *habeas corpus* lies into those islands for one imprisoned there, for the King may demand and must have an account of the cause of any of his subjects' loss of liberty, and therefore a return must be made of this writ, to give the Court an account of the cause of imprisonment; for no liberty, whether of a county palatine or other, holds place against those *brevia mandatoria*, as that great instance of punishing the Bishop of Durham for refusing to execute a writ of *habeas corpus* out of the King's Bench, 33 Edw. 1, makes evident.

#### PECULIAR LAWS.

*Insolvency.*—In cases of insolvency the debtor files an affidavit of his insolvency in the Cohue Royale, (or place

of judicature), and at the same time hands in a schedule of his debts and of his means of satisfying them. Four public proclamations are then made at certain intervals, and upon the fourth the creditors come in. The judge, commencing at the bottom of the list, calls upon the last creditor, and asks him if he is willing to receive the property of the insolvent into his hands, and undertake to satisfy the demands of all the other creditors. If he refuses, his name is erased from the list of creditors, and the same offer made to the next in succession, and the same consequence accompanies a refusal, till some creditor, from the number struck off thinks he can safely undertake the task of settlement.—Falle's Account, p. 111.

This is the description of the mode of proceeding given by Mr. Falle, and adopted by modern writers in their account of the customs of the island. Mr. Falle's book was published in 1694, and in it he expressed (c. iv. p. 108) a strong wish that the public might have the advantage of having their laws "collected, methodized and digested into a system or code." This wish was not gratified till nearly 80 years afterwards, when a small volume entitled "A Code of Laws for the Island of Jersey," was published, with a confirmation and ratification of the work by the Privy Council, dated on the 18th March, 1771. In that code is the following statement of the law as to the proof to be given by the debtor of his means of satisfying the claims of his creditors.

The debtor who shall claim to put his effects into the hands of the court, in order to procure time to arrange his affairs, shall not be permitted to do so till after having satisfied the court that they are sufficient to discharge his debts; and in that event he shall be bound to produce an exact statement of all his effects, real and personal, and to lodge at the same time with the secretary all his books of account, bills, bonds, papers, &c. verified by oath, in order that they may be referred to in case of necessity.—Code of Laws, 221.

#### LIMITATIONS.

Three years of interruption or discontinuance of claim in heritable matters, and one year in possessory matters, shall be a sufficient prescription.—Code, 168.

Any person, after having peaceably and without interruption, enjoyed during forty years any immoveable pro-

perty, shall not be disturbed in regard to the ownership of the thing possessed; the possession for that period giving a perfect and uncontrovertible right according to the ancient custom of the island.—Code, 223.

#### REGISTRATION OF DEEDS.

Deeds and hypothecations are subject to registration, under pain of being considered private, and of having no effect over others posterior in date. Such deeds to have no effect whatever if not registered within six months of their date.—Code, 278, 279.

A bond is considered a sort of hypothecation of the real and personal property of the obligor, and binds the heir whether he is named or not.—Falle, 86.

*Rate of Interest.*—Conformably to the ordonnance established by the act of the court relating to heritage, of the date of the 23d September, 1714, the interest of money shall not exceed 5 per cent., on pain of the offenders being considered usurers, and punished accordingly.—Code, 128.

*Choses in Action.*—These are not assignable.—Code, 171.

## GUERNSEY, ALDERNEY AND SARK.

GUERNSEY is an island situated about  $13\frac{1}{2}$  miles north-west of Jersey. It is of a triangular form, about nine miles long, and six in its greatest breadth. Its circumference is about 39 English miles. The soil and climate are good, and though the land generally slopes downwards to the north, it produces excellent crops of every kind.

### HISTORY AND CONSTITUTION.

In its history and constitution this island very much resembles Jersey.—See Hale's History of the Common Law, 183 et seq. and 4 Inst. c. 70.

The first regular settlement of Guernsey appears to have been effected in 962 by some Benedictine monks. The lands of which they took possession were erected into a fief by Robert Duke of Normandy, father of William the Conqueror. Under the reign of his son, Sampson D'Anneville obtained the grant of a large seignory, and established the feudal system and other institutions existing in the rest of William's dominions. This sort of government was however almost abolished by King John, who established by charter a court consisting of twelve *jurats*.

The Governor has at present the care and custody of the castles, fortifications, &c., and his jurisdiction extends over all the channel islands, except Jersey. The duties of his office are performed by a Lieutenant-Governor, appointed by commission from the crown.

The Assembly, called the States of the Island, is only held on particular occasions. Under the name of the States of Election, it appoints the magistrates and the sheriff. The members composing the States of Election are the Bailiff, Procureur and twelve Jurats; the eight Rectors of the island; the two Constables appointed for each of the ten parishes; the twelve *Dauzaniers*, in each, excepting the town and the vale, the former returning twenty, the latter sixteen, making altogether the number of 174. In this Assembly the Governor or his Lieutenant

has no vote, and the Bailiff presides as speaker. When money is to be raised, the chief local authority convenes the States of Deliberation, an assembly consisting of thirty-two members, formed by the Bailiff and Procureur, the twelve Jurats, the eight Rectors, and the Constables and Douzaniers of the General Council, who in this assembly amount only to ten. The taxes and subsidies, when out of the ordinary course, must be sanctioned by the King in Council before they can be levied.

The island forms part of the see of Winchester, under the jurisdiction of which it was placed by Queen Elizabeth. The Dean holds the Bishop's Court as surrogate, and has the power of granting special licenses for the solemnization of private marriages. The island is divided into ten parishes, four of which however form two unions, so that there are but eight rectors.

St. Peter's Port is the capital of the island. In 1821 it contained above 11,000 inhabitants, the population of the whole island amounting at that time to nearly 21,000.

ALDERNEY is about eight miles in circumference, it is nearer Normandy than Guernsey, and is remarkable for its strait, called the Race of Alderney, so fatal to shipping.

SARK is about five miles in length, and not three broad. Its cliffs on all sides render it almost inaccessible.

Alderney and Sark are under the jurisdiction of the Governor of Guernsey.

There is in Alderney a bailiff and other officers of justice, from whom there lies an appeal to the courts at Guernsey.

Sark is under the same kind of government as Alderney.

The laws of Guernsey are very nearly the same as those of Jersey. Under the head of "Courts" will be noticed the principal differences between them.

#### LAWS.

##### *Courts—Appeals, &c.*

On the 11th September, 1815, a commission was issued to G. S. Holroyd, H. M. Dyer, and William Bolland, Esquires, to examine into the laws in force between debtor and creditor in the Island of Guernsey. The commissioners in their report, which is dated on the 2d of May,

1816, give the following account of the courts of the island:—

“The Royal Court is understood to have been erected by a royal charter in the reign of King John for many public purposes, and for the arrangement of the internal affairs and police of the island, and appears to be possessed of considerable powers and privileges. It is the sole local tribunal before which all legal controversies are carried for determination. It consists of the Bailiff (named by the King) and twelve Jurats, out of which number one Jurat is always appointed by the Bailiff to be his Lieutenant or representative in his absence, but who is not distinguished from his brother Jurats when the Bailiff himself is present. No assembly of the court can be complete without the Bailiff or his Lieutenant. There are three terms in a year, each of which continues six weeks. It sits occasionally also in vacation. During the terms four Jurats are assigned to attend in court in rotation, though two of them, with the Bailiff or his Lieutenant, are sufficient to constitute what is termed an Ordinary Court, before which all causes are brought in the first instance.”

From the decision of this court a party was entitled to appeal to a court called “The Court of Appeal, or Cour d’Appel devant plus de Jurés.” This court was, upon the recommendation of the commissioners, abolished.

A further and final appeal lay to the Court of Judgments, in which not less than seven Jurats must sit, together with the Bailiff or his Lieutenant. This appeal was to be prosecuted within a year and a day. Nine days in each year were set apart for these appeals. From the determinations in the Court of Judgments the final appeal lies to the King in Council.

The report of the commissioners has recommended several important alterations in the law of debtor and creditor, and especially the abolition of the “Retrograde Offer,”(1) but the Royal Court with most patriotic zeal defended their ancient customs, and the result was, that the Retrograde Offer was not to be abolished, but a change was made in the mode of carrying it into effect. By an Order in Council dated 13th May, 1823, the *Cour d’Appel de-*

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(1) For a description of this proceeding, see the head “Insolvency” in the account of Jersey, ante, p. 702.

*vant plus de Jurés* was abolished, and it was ordered, "that in appeals from the Ordinary Court to the Court of Judgments no depositions in writing should be taken, nor any appeal allowed where the sum in dispute did not exceed 150 livres tournois; that appeals to the King in Council should be confined to cases where the object in dispute, if real property, should amount to the value of £10 sterling per annum, or, if personal property, of £200 sterling; and such appeals should be prosecuted within six months from the date of the judgment complained of." (2)

The order then went on to declare, "that no arrest of the person be permitted for any sum under £5 sterling, and that it be in all cases founded on an affidavit taken before the bailiff, lieutenant-bailiff, or before any one jurat of the court; and that all persons, whether *fondés en héritage* (3) or not, be equally liable to arrest for debts due on promissory notes, bills of exchange, or other negociable securities.

"That if it be made a requisite qualification of bail, whether *fondés en héritage* or not, that he prove himself possessed of sufficient property over and above the payment of his own just debts to answer the demand of the plaintiff, one-half of which property shall be real estate within the island.

"That the privilege claimed by those who are *fondés en héritage* of having their goods exempted from attachment be abolished."

*Bankruptcy*.—By another Order in Council of the 20th December, 1825, it was among other things provided, that the local laws of bankruptcy should be applied "to natives and others received as inhabitants according to the usual forms, and all His Majesty's subjects resident in the island a year and a day."

(2) A subsequent communication from the Bailiff of Guernsey stated, that there was another mode of appeal, against the evils of which this order did not afford a remedy; this was "the appeal by Doleance, which by an Order in Council of the 27th June, 1627, is granted to every person giving bail to pay costs and £10 to the poor." It was suggested that this sum of £10 should be raised to £40 or £50, to be forfeited to the

respondent on failure of the appeal. This excellent suggestion does not appear to have been adopted.

(3) *Fondés en héritage*, that is, possessed of real property, which in Guernsey means lands or houses, or rents issuing therefrom. The possession of this property entitled the possessor to many valuable privileges, some of which were abolished by this and another Order in Council.



*Registration.*

Contracts are registered within this island, and generally have priority according to the date of their registration.

Most commonly in conveyances of houses or lands, whether by way of absolute sale, or "giving for ever to rent," (4) the grantor does not sign the deed himself, but goes before two or more of the jurats, and there acknowledges it to be his act and deed, whereupon the jurats sign it, and it is then registered, and at the next seal-day it is sealed with the seal of the island; and the same may be done for any other deeds. Debts under private signature are not to be enrolled until they have been acknowledged before the Bailiff or his Lieutenant and two Jurats, and they will then take place from the date of such acknowledgment and enrolment; and in the event of the debtor "renouncing his estate" (becoming bankrupt) will have preference over other debts not so enrolled.—Warburton's Treatise, edit. 1822.

*Descent.*

Real estate cannot be devised by will, but must descend to the heirs, according to the custom of the island.

Children born out of wedlock are deemed legitimate, if their parents afterwards marry.

*Criminal Matters.*

In all criminal matters, except those of treason, coining, and striking the Bailiff or Jurats in the execution of their duty, the Court of Guernsey has full and absolute authority to hear and determine according to the laws and customs of the island, and to give sentence accordingly, from which sentence there lies no appeal.

*Law Officers.*

The law officers of the crown in Guernsey are the Procureur de Roi, or Attorney-General, and the Controller, or Advocate-General; and these offices are generally filled by members of the oldest families in the island.

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(4) That is, the owner lets the land to another to hold to him and his heirs for ever, paying yearly so much rent as they can agree for.

*Commercial Regulations.*

The following important regulation gave the Channel Islands a right to enjoy a direct trade with the East Indies in the article of tea. 3 & 4 Wm. 4, c. 101, s. 2. And be it further enacted, that it shall be lawful to import any tea into any of the islands of Guernsey, Jersey, Alderney or Sark, from the Cape of Good Hope and the places eastward of the same to the Straits of Magellan, or from the United Kingdom, and not from any other place, in such and the like manner as if the same were set forth in an act passed in the present session of parliament to regulate the trade of the British possessions abroad.

## MALTA.

MALTA, anciently Melita, is an island in the Mediterranean nearly opposite to the southern extremity of Sicily. It lies in about the 36th degree of north latitude, and the 14th and 15th of east longitude. It is distant sixty miles from Cape Passaro, the nearest point of Sicily, 190 from Spartivento in Calabria, and about 200 from Calipia, the nearest point of Africa. Its length is twenty-one miles, its breadth eleven, its circumference sixty. Together with Gozo, from which it is separated by a strait four miles wide, it contains about 100 square miles of superficial extent. The soil is very thin, great part of it having been brought from Sicily, and the inhabitants daily labour to add to its amount by breaking up the surface of the stony rock into a sort of gravel and mixing it with the rest.

There are two towns in Malta, Valetta, the present capital, and Medina, known also as Città Vechia. The harbour of Valetta is double, and is one of the finest in the world. The city is built on a narrow tongue of land, having the castle and light of St. Elmo at its extremity, and an admirable port on each side.

The island of Gozo, or Gaudisch as the natives call it, is eight miles long, six miles broad, and twenty in circumference. Though thinly inhabited it contains no town but has six villages and a strong fort in the centre of the island.—Encyc. Metr.; Macc. Dict. of Comm. 2d ed.

## HISTORY.

Malta was first known as having been ruled by an African of the name of Battus, who was an enemy of Queen Dido, and subdued by the Carthaginians. From them it fell into the hands of the Romans, and the Saracens severed it from their empire. Roger, the Norman King of Sicily, having in his turn expelled them, it remained attached to the Sicilian monarchy (*a diploma of Louis VII., in 1350,*

having united Malta and Gozo to the dominions of Sicily, and having declared that he was their Lord Suzerain,) till the Emperor Charles V. gave it to the Knights of St. John, after their expulsion from Rhodes. The French became masters of it in 1798, and the inhabitants having in 1800 risen upon and blockaded the French, and having been afterwards assisted by the English and Portuguese fleets, the French Governor finally surrendered to the English commander. It was captured after a long blockade on the 5th November, 1800. It had been stipulated by the treaty of Amiens, that these two islands were to be delivered up to their original sovereign; but various difficulties having been opposed by the then French government to the fulfilment of the treaty, and in the meantime a new war having been commenced in 1802, these dependencies have continued, and by the treaty of Paris on the 30th May, 1814, became permanently annexed to the British crown.—Galt's Travels in the Mediterranean; Cockburn's (General) Voyages; and Colonel Colquhoun's British Empire.

The resident population of both islands amounted in 1831 to 12,000. The revenue, according to Mr. Colquhoun, is equal to £100,000. Mr. M'Culloch adds, that the expenditure, exclusive of that incurred in England on account of the island, amounts to about £88,000. The shipping was said to equal 4,000 tons, and the exports and imports amounted each to about £2,000,000; but that estimate was made at a time when the island was used as one of the depôts of manufactures intended to be introduced into the continent of Europe, in contravention of Napoleon's decrees.—Ency. Metro.; M'Culloch's Dict. Com.

#### CONSTITUTION.

The following account of the constitution of the Islands of Malta and Gozo is taken from a pamphlet, entitled "Authentic Materials for a History of the People of Malta," composed, as its title page announces, by "William Eton, Esq. Superintendent-General of the Quarantine and Public Health Department in Malta." Mr. Eton appears to have been strongly inclined to favour the call of the Maltese for a popular constitution, his authority therefore may perhaps be questioned, but his assertions of fact are generally supported by references to the origi-

nal documents, and there is little reason to believe that his opinions were suffered to influence his statements. His pamphlet contains the best account of these dependencies that it has been the fortune of the author to meet with.

The Maltese appear to have in general enjoyed the blessings of a free constitution.

Their liberties were secured principally by the institution of a *Consiglio Popolare*, or Assembly of National Representatives.

The time when this body was first instituted cannot be precisely ascertained, but is supposed to be as early as the year 1090.

This *Consiglio Popolare* was a permanent representation of the whole people. Its existence and functions are acknowledged and confirmed by all their Suzerains.

The gradual encroachments on its rights and privileges, and its final suppression by the Grand Masters, were the principal causes of the disaffection of the Maltese, and of the many conspiracies which were formed to subvert their usurped power.

#### *Consiglio Popolare.*

In the *Consiglio Popolare* resided the whole legislative authority.

It not only nominated the members of the executive government for the management of ordinary affairs, but it watched their conduct, and had the power of controlling and displacing them.

The appointment of the principal officer of government, the *Capitano*, received the sanction of the Suzerain. The powers of this officer have varied at different periods, but they were always limited. Sometimes he has been nominated solely by the Suzerain, sometimes by the Maltese; but the more general and constitutional practice seems to have been to submit to the Suzerain the names of three persons, from whom he made his choice.

All important matters were decided by the Popular Council.

The Jurats, as the administrators of public property, were dependent on this body, and were nominated by it. It took care of the commercial interests, and superintended the operations of the Università; and whenever it became necessary nominated procurators, syndics, &c.

It appointed ambassadors to sovereigns to negotiate

on public affairs, and to the Suzerains to ask favours or make complaints, it being the particular duty of the council to defend the popular rights and privileges.

It deputed from its own body a certain number of persons of probity, of the first and second classes, (of which the *Consiglio Popolare* was always composed) to form a *Consiglio Particolare*, which was annually elected by *Scrutinio*, the new public officers or ministers, the election of whom belonged to the citizens, agreeably to their most ancient privileges.

The *Scrutinio* means a court that is held annually on September 27th to appoint proper persons to hold offices. The appointment of all public officers was only for one year, when others were appointed in their places. The Grand Masters, and since them the British Civil Commissioners, have latterly arrogated this power to themselves.

The public officers thus nominated were, both in Malta and Gozo, the Jurats and Treasurer of the *Università* (who compose that magistracy), the *Acataponi*, who were then of the first families, latterly they are a kind of assistant in the markets and in the affairs of the *Università*, the judges, criminal and civil, the superintendent of the city ramparts, and other public edifices, the commissaries of the public health department, and the procurators of the hospital and public places.

It seems that the *Consiglio Popolare* sometimes deputed the *Università* (or Jurats) to exercise the functions of the *Consiglio Particolare*, and elect the judges, &c. by *scrutinio*.

The *Consiglio Popolare* was by the Sicilians, and by the Maltese themselves, frequently called the Council of the City, *Città Vecchia* (Medina, or *Città Notabile*) by excellence called The City.

The *Capitano di Virga* (who was the royal officer or sheriff of the island) was prohibited from entering the *Consiglio Popolare* whenever he had any interest in the business to be treated of. He could only be a principal gentleman or a noble. He was forbidden to have any private prison of his own, and when he arrested persons, he was bound to deliver them to the public prisons. He was generally the military commander and minister of the King. He was often styled the Captain of the City. Valetta was not then built.

The Castellano, or Governor of the Marine Castle, had no right to interfere in the affairs of the Università or of the city; nor had he, as Castellano, any jurisdiction beyond the ditches of the fort.

The annual officers were made by *mastra* and *scrutinio* by a majority of votes.

*Mastra* was the golden book or register of noble and distinguished families. Some time after the government of the Grand Masters had been established this book disappeared. None were eligible but those whose names were inscribed in this book.

No new duty or tax could be collected without the consent and order of the Consiglio Popolare; and it seems that the consent of the Suzerain was also necessary, at least to taxes of importance.

The Consiglio Popolare was abolished in 1775, but it had long ceased to be the representation of the people. The Grand Master latterly had put into this office his own creatures, whom he removed at his pleasure, giving no reason.

With respect to the persons who composed the Consiglio Popolare, it appears by ancient records, that before the coming of the order of St. John, and many years afterwards, this body was composed of a certain number of persons of families of the first and second classes, and the representatives of towns (*casal*) elected by the people, who were called constables (*contestabili*, *conètables*). The jurats and all other officers of popular election had a seat in the Consiglio Popolare on general affairs.

And when there was a question which related to the general interest of the nation, and in which the clergy had any concern, the vicars, bishops, and the priests, representatives of the clergy, were also admitted.

Strangers domiciliated five years, and married to Maltese women, were frequently admitted members of council by an act of the council itself.

The offices of captain, of judge, civil and criminal, of jurats and of acatapano, could not be held by merchants or artisans.

#### Gozo.

This island was governed in every respect the same as Malta. It had its own Consiglio Popolare, and every other officer similar to those in Malta.

The people of Gozo could not any more than those of Malta, be cited to appear before any tribunal out of their island, except in cases of high treason against the Suzerain, or upon feudal questions.

*Courts—Laws.*

The tribunal of Valetta was composed of a *castellano* (a knight); a criminal and civil judge; a fiscal and deputy-fiscal; an advocate and pro-advocate of the poor; a protector of prisoners (a knight); two notaries are actuaries and writers; a grandvisconte or sheriff; and captains or officers of police with their assistants.

There were similar tribunals in Città Notabile, the capital.

From the sentences of these judges an appeal lay to the Judge of Appeals, and from his sentence there was a second appeal to the Judge Surrogate, whom generally the Grand Master deputed, on the petition of the condemned or cast, as judgment was not considered to be complete without three concurring sentences, which formed a final and conclusive judgment.

The Grand Master then confirmed, revised, altered or annulled the sentence, or even augmented the punishment adjudged by the sentence; of which there was an instance in the time of Pinto, not many years ago, now in the records of the tribunal of Valetta. This Grand Master ordered by his sign manual, which constituted a law, certain thieves to be hanged, who had been by three concurring sentences condemned to be banished to Sicily, and they were executed.

To the Judge of Appeal were referred also causes appealable from the Government Court of Gozo; from the office of First Appeal at Città Notabile; from the office formerly called *Siniscalia*, (Sénéchals Court, which had exclusive jurisdiction over all persons belonging to the palace, to the custom-house, and to the Università); from the *consolato del mare*, (a commercial court,) and other subaltern tribunals.

In capital causes and those of high crimes, (*delitti gravi*), the three judges (criminal, civil and judge of appeal) were joined; they met in the apartments of the castellano, and decided the causes, which were argued and defended by the Fiscal and the Poor's Advocate.



The judges, instead of salaries, received the penalties and taxed fees for sentences, &c., which altogether formed a considerable sum.

Though this is the formation of the tribunals, the code of Rohan and the laws since made by the decrees of Hompesch, by Sir Alexander Ball as Governor for the King of the Two Sicilies, and by Messrs. Cameron and Ball, as Civil Commissioners, are nevertheless the only rule of justice and the *lex scripta* actually in force.

A new code of laws, under the title of *Dritto Municipale di Malta*, was published upon the sole and, as it seems, usurped authority of the Grand Master Rohan, who had just before made use of a popular sedition as a pretext for utterly abolishing the *Consiglio Popolare*.

In difficult cases where these laws are obscure or insufficient, recourse is had to the writings of Italian doctors of law, where cases more to the point have been decided.

When the Judges did not agree in their opinion, the Grand Master or the Civil Commissioners decided of themselves, or took the opinions of their lawyers.—Authentic Memoirs.

A Supreme Court of Justice now exercises the highest judicial functions in the island, and the Chief Justice of this tribunal is appointed by the crown. See post, 721.

#### *Coroner.*

The Criminal Judge executes the functions of an English coroner. When information is brought to him of a crime being committed, he proceeds to the place and takes an inquest.

The Judge having taken an inquisition, causes such persons to be sent to prison as are accused or suspected. He examines witnesses one by one, the fiscal, advocates, writers, &c. being present, with the doors open or shut, as he shall think proper. Sometimes he examines them privately in a room. Their testimony is taken down in writing, and the witnesses sign it. The manner of examination and the questions put to them, depend entirely upon the Judge, no one having a right to interfere.

From the documents the Judge forms what is called *compilazione di processo*.

The Judge of Appeals and the Judge Surrogate have only their papers to guide them. They cannot dispute the facts as stated by the Criminal Judge, nor can they

examine witnesses, or proceed on any other grounds without an express order from the Grand Master, or at present from the Civil Commissioners.

#### *Fiscal.*

He is to see that the Judge takes an inquest immediately, to furnish the Judge with witnesses, and what is necessary to prove delinquency, whether the suit be by application of parties or by inquisition; he is to be with the Judge in every act, judicial or extra-judicial, respecting the merits of every criminal cause. He takes inquisitions, &c. in the absence or sickness of the Judge. The tribunals of Città Notabile and of Gozo are constituted much in the same manner.

#### *Castellano.*

The President or *Castellano* holds an office almost merely nominal. He is like the Fiscal to see that justice be administered with promptitude.

There exists also another court or council, which has in all times been unpopular, called *Signatura*; the members are properly the Privy Councillors of the Grand Master, and are now those of the Civil Commissioner, they are styled *Uditori*. To this council are delivered petitions complaining of injustice or delays, or for obtaining offices or places under government, praying for suspension of proceedings, and various other cases. In fine, there are scarcely any limits to the affairs which may not come before this council in the form of petitions.

The number of the *Uditori* is in general four or five. They are men of the law by profession, or ecclesiastics, or gentlemen who have studied the law. They rank before the tribunals.

The *Uditori* hold their places during pleasure, and they are often changed.

This council, properly constituted, would be a check upon the tribunals.

#### *The Università.*

This assembly, once the supreme magistracy, and still called "The Magistracy," has at present only a limited jurisdiction in the police of the markets. It is composed of four or five Jurats (*Giurati*) and a Treasurer. There

formerly was a fund belonging to the Università, from which it paid interest to those who put their money into it, but the French seized this fund, and ruined many families.

The Jurats supply the island with corn, wine and oil. No one is allowed to sell those articles in the island besides the Università; they fix the price at which they sell, with the approbation of the Civil Commissioner. The profits arising from the sale of corn produces a considerable annual revenue to government, for whose account the purchases and sales are now made. There ought always to be two years' provisions in Malta.

### *Appeals.*

By an order in Council of the 18th December, 1834, regulations were made for appeals from the decisions of the Supreme Council of Justice to the King in Council. The following are the important parts of the order.

“Whereas by the law at present in force in the isle of Malta and its dependencies, no provision for permitting and regulating appeals from the Supreme Council of Justice in and for the said island and its dependencies, and it is necessary to make provision for regulating such appeals; it is therefore hereby ordered by His Majesty by and with the advice of his Privy Council,

“That any person being a party or parties concerned in any cause, suit or action depending, or which may hereafter be commenced or brought in or before the Supreme Council of Justice in the said island of Malta, may appeal to His Majesty, his heirs and successors, in his or their Privy Council, in such manner, within such time, and subject to such rules, regulations and limitations as are hereinafter mentioned.

“In case any judgment, decree, order, or sentence for or in respect of any sum or matter at issue above the amount or value of £1000 sterling, or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand or question to or respecting property, or any civil rights amounting to or of the value of £1000 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the Supreme Council of Justice, may, within fourteen days next after the same shall have been pronounced, made or given, apply to the said Supreme Council of Justice by

petition for leave to appeal therefrom to His Majesty, his heirs and successors, in his or their Privy Council.

“And in case such leave to appeal shall be prayed by the party or parties who is or are directed to pay any sum of money or perform any duty, the said Supreme Council of Justice shall and is hereby empowered either to direct that the judgment, decree, order or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended during the said appeal, as to the said Supreme Council of Justice may appear to be most consistent with real and substantial justice.”

The usual provisions as to security to be given by the parties for the performance of the order of the Privy Council, if the execution is directed to be executed or to be stayed, are then made, and security is also directed to be given by the appellant for the due prosecution of the appeal and the payment of costs. The last-mentioned security must be entered into “within one month from the date of such petition for leave to appeal,” and “then and not otherwise the said Supreme Council of Justice shall allow the appeal.”

The usual reservation is then inserted, of power by the crown to admit the appeal “upon such terms and subject to such limitations, restrictions, and regulations as His Majesty, his heirs and successors, in his or their Privy Council, shall think fit.”

In cases where appeals are allowed, the Supreme Council of Justice is directed to certify and transmit a true and exact copy of all evidences, proceedings, judgments, decrees and orders had or made in such causes appealed, so far as the same shall have relation to the matter of appeal, such copies to be certified under the seal of the said council.

The Supreme Council of Justice is lastly directed “to conform to and execute or cause to be executed such order or orders as shall be made in the premises by His Majesty, his heirs and successors, in his or their Privy Council, in such and the same manner as any original judgment, sentence or order of the said Supreme Council of Justice would or might have been executed.”

By a decree of the Supreme Council pronounced on the 27th July, 1829, in a case then pending of application for leave to appeal, the amount of security to be given for

the due prosecution of the appeal, and the payment of costs, was limited to £200.

The Supreme Council, upon the reading of the application for leave to appeal, orders a citation to issue to the other party to show cause why leave to appeal should not be granted. Upon the said citation both parties are heard, and the Supreme Council grants or refuses leave according to law. Both parties agree as to the copies of the proceedings that are to be transmitted.

#### SALARIES OF PUBLIC OFFICERS.

The following account of the salaries of public officers has been inserted, as it gives at a recent date some idea of the nature of the tribunals existing at Malta. The author has not been able to learn whether the recommendations of the commissioners here noticed have or have not been carried into effect.

On 1st November, 1830, a report was presented on the revenue and expenditure of Malta.

In the course of this report the commissioners recommended that the Commercial and Bankrupt Court should be consolidated with the Civil Court: that there should be but one local court of appeals for all civil causes, and that a Chief Justice and four other Judges should form the judicial establishment of the island. And further, that there should be but one Crown Advocate, and one Advocate for the Poor, and four Magistrates for the inferior jurisdiction.—House of Commons' Papers, December, 1830, No. 64, p. 11.

The Lieutenant-Governor has £4000 a-year.

The Chief Justice, who is also a judge of the Vice-Admiralty Court, £1500 a year.

	£.	s.
4 Puisne Judges* . . . . . each	428	0
1 ————† . . . . .	350	0
1 ————† . . . . .	308	10
1 Joint Crown Advocate . . . . .	192	18
1 Ditto† . . . . .	150	0
1 Advocate of the Poor . . . . .	83	7
1 Ditto† . . . . .	42	12

\* Recommended by the commissioners to be reduced in number, and to receive a salary of £450 each.

† Recommended to be discontinued.

*Inferior Court.*

This court is composed of one Magistrate, who is also Coroner, and receives a salary of £342 18s.; a second magistrate, who receives £257 3s., and two others £180 each.

There are six Lords-Lieutenant at £85 15s. each.

*The Supreme Council of Justice.*

The Supreme Council of Justice consists of a President and four members.

*The Court for Piratical Offences.*

The judges constituting this court appear to receive no emoluments as such.

*The Court of Special Commission.*

This court was instituted in October, 1829. There are seven commissioners, who receive no emoluments as such.

The Judge of the Commercial Court receives no salary, nor the President and Judges of the Court of Appeal; nor of the Civil Court of the First, Second or Third Hall.

There is a magistrate of the markets, who receives a salary of £205 15s.—House of Commons Paper.

## THE ISLE OF MAN.

THE Isle of Man lies midway between England, Scotland and Ireland. According to Geraldus Cambrensis a dispute once existed as to which of the three countries it could most properly be said to belong, and that this dispute was settled against the claim of Ireland, by the fact that venomous creatures would live within its circuit. The soil is not fertile, except in the southern part of the island. The climate, though more equable than that of England or Ireland, is not favourable to vegetation, on account of the prevalence of easterly winds. The herring fishery is carried on to a considerable extent.

### HISTORY AND CONSTITUTION.

This island was held by the Kings of Northumberland till it was conquered by the Norwegians. In 1226 it was purchased from them by Alexander the Third of Scotland. It was afterwards held by Lord Scrope, who forfeited it to Henry IV., and by him it was granted in the first year of his reign to Henry Earl of Northumberland; and on his being attainted of treason in the 5th Hen. IV. it was again granted to John Lord of Stanley and Man. In 1651 it was, upon the attainder of James Stanley, Earl of Derby, conferred by the parliament upon Lord Fairfax. On the Restoration it reverted to its ancient lords, and on the death of Charles Earl of Derby in 1735, it became vested in James Duke of Athol, as heir-general of Earl James. In 1764 it was sold by Charles Duke of Athol to the British government, with all its rights of sovereignty, for £70,000; and in 1792, on the ground that it had been purchased much below its value, an additional compensation of £3000 a-year was granted to the Dukes of Athol for ever.

The island is ruled by a Governor, a Council for public affairs, and twenty-four persons, forming the House of Keys, so called, as it is said, from their unlocking the laws. These persons were originally representatives chosen by the people, but are now a self-elected and permanent body. Together with the two Deemsters (the

judges of the northern and southern districts of the island, who decided causes as they *deemed* (1) most conscientiously, by what were termed their *Breast Laws*), they formed the Tinwald Court, so named from the Icelandic *Ting*, an assembly, and *wald* a fence. This court meets annually in the open air on the Feast of St. John the Baptist, and is a court of general oyer and terminer. In this general meeting all new laws, the acts of Tinwald, are promulgated.

The Deemsters are judges both in civil and criminal cases, and their oath on entering office was to do justice between man and man, "as equally as the herring bone lies between the two sides," in order that their daily food might remind them of their duty.

The fleet engaged in the herring fishery is subject to a Water-bailiff when on shore, and to a Vice-Admiral when at sea. The island is the seat of a bishopric, which however does not confer a right to a seat in the English Parliament.

The civil division of the island is into six *sheadings*, each having an *Annuus* or coroner, whose duties resemble those of a sheriff, and as many *Moats* and *Captains* as it contains parishes. The Moats superintend the revenue, the Captains the militia.

#### LAWS.

Lord Coke says (4 Inst. 283), "that this island hath been an ancient kingdom," but remarks that it was never granted or conveyed by that name. Lord Hale says, "touching the Isle of Man, this was sometimes parcel of the kingdom of Norway, and governed by particular laws and customs of their own, though many of them hold proportion or bear some analogy to the laws of England, and probably were at first and originally, seeing the kingdom of Norway as well as the Isle of Man have anciently been in subjection to [qu. united with] the crown of England. Vide Legis Willi Primi in Lambard's Saxon Laws."—Hale's Hist. Com. Law, 183.

The Isle of Man is no part of the realm of England; and it is out of the power of the Chancery of England, and not to be bound by the Parliament of England but by special name.—4 Inst. 201—284.

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(1) Lord Coke says, 4 Inst. that the word Deemsters is derived from the Saxon word *Dema*, which itself means a judge.



## SOUTHERN AUSTRALIA.

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AFTER the preceding matter had been placed in the printer's hands the Southern Australian Bill, referred to at page 672, was passed into a law. It has been thought advisable to append the statute which has thus been obtained to create a new colony.

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4 & 5 WILL. IV. CHAP. 95.

*An Act to empower His Majesty to erect South Australia into a British Province or Provinces, and to provide for the Colonization and Government thereof.* [15th August, 1834.]

WHEREAS that part of Australia which lies between the meridians of the one hundred and thirty-second and one hundred and forty-first degrees of east longitude, and between the Southern Ocean and twenty-six degrees of south latitude, together with the islands adjacent thereto, consists of waste and unoccupied lands which are supposed to be fit for the purposes of colonization: And whereas divers of His Majesty's subjects possessing amongst them considerable property are desirous to embark for the said part of Australia: And whereas it is highly expedient that His Majesty's said subjects should be enabled to carry their said laudable purpose into effect: And whereas the said persons are desirous that in the said intended colony an uniform system in the mode of disposing of waste lands should be permanently established: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful for His Majesty, with the advice of his Privy Council, to erect within that part of Australia which lies between the meridians of the one hundred and thirty-second and one hundred and forty-first degrees of east longitude, and between the Southern Ocean and the twenty-six degrees of south latitude, together with all and every the islands adjacent thereto, and the bays and gulfs thereof, with the advice of his Privy Council, to establish one or more provinces and to fix the respective boundaries of such provinces; and that all and every person who shall at any time hereafter inhabit or reside within His Majesty's said province or provinces shall be free, and shall not be subject to or bound by any laws, orders, statutes, or constitutions which have been heretofore made, or which hereafter shall be made, ordered, or enacted by, for, or as the laws, orders, statutes, or constitutions of any other part of Australia, but shall be subject to and

bound to obey such laws, orders, statutes, and constitutions as shall from time to time, in the manner hereinafter directed, be made, ordered, and enacted for the government of His Majesty's province or provinces of South Australia.

2. And be it further enacted, that it shall and may be lawful for His Majesty, his heirs and successors, by any order or orders to be by him or them made with the advice of his or their Privy Council, to make, ordain, and, subject to such conditions and restrictions as to him and them shall seem meet, to authorize and empower any one or more persons resident and being within any one of the said provinces, to make, ordain, and establish all such laws, institutions, or ordinances, and to constitute such courts, and appoint such officers, and also such chaplains and clergymen of the Established Church of England and Scotland, and to impose and levy such rates, duties, and taxes, as may be necessary for the peace, order, and good government of His Majesty's subjects and others within the said province or provinces; provided that all such orders, and all laws and ordinances so to be made as aforesaid, shall be laid before the King in Council as soon as conveniently may be after the making and enacting thereof respectively, and that the same shall not in anywise be contrary or repugnant to any of the provisions of this act.

3. And be it further enacted, that it shall be lawful for His Majesty, his heirs, and successors, by warrant under the sign manual, to be countersigned by His Majesty's Principal Secretary of State for the Colonies, to appoint three or more fit persons to be commissioners to carry certain parts of this act, and the powers and authorities hereinafter contained, into execution, and also from time to time at pleasure to remove any of the commissioners for the time being, and upon every or any vacancy in the said number of commissioners, either by removal or by death or otherwise, to appoint some other fit persons to the said office; and until such appointment, it shall be lawful for the surviving or continuing commissioners or commissioner to act as if no such vacancy had occurred.

4. And be it further enacted, that the said commissioners shall be styled "The Colonization Commissioners for South Australia;" and the said commissioners or any two of them may sit from time to time, as they deem expedient, as a Board of Commissioners for carrying certain parts of this act into execution.

5. And be it further enacted, that the said commissioners shall cause to be made a seal of the said board, and shall cause to be sealed or stamped therewith all rules, orders, and regulations made by the said commissioners in pursuance of this act; and all such rules, orders, and regulations, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received as evidence of the same respectively without any further proof thereof; and no such rule, order, or regulation, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid.

6. And be it further enacted, that the said commissioners shall and they are hereby empowered to declare all the lands of the said province or provinces (excepting only portions which may be reserved for roads and footpaths) to be public lands, open to purchase by British subjects, and to make such orders and regulations for the surveying and sale of such pub-

lic lands at such price as the said commissioners may from time to time deem expedient, and for the letting of the common of pasturage of unsold portions thereof as to the said commissioners may seem meet, for any period not exceeding three years; and from time to time to alter and revoke such orders and regulations, and to employ the monies from time to time received as the purchase-money of such lands, or as rent of the common of pasturage of unsold portions thereof, in conducting the emigration of poor persons from Great Britain or Ireland to the said province or provinces: provided always, that no part of the said public lands shall be sold except in public for ready money, and either by auction or otherwise as may seem best to the said commissioners, but in no case and at no time for a lower price than the sum of twelve shillings sterling per English acre: provided also, that the sum per acre which the said commissioners may declare during any period to be the upset or selling price at which public lands shall be sold shall be an uniform price; (that is to say,) the same price per acre whatever the quantity or situation of the land put up for sale: provided also, that the whole of the funds from time to time received as the purchase-money of the said lands, or as the rent of the common of pasturage of unsold portions thereof, shall constitute an "Emigration Fund," and shall, without any deduction whatsoever, except in the case hereinafter provided for, be employed in conveying poor emigrants from Great Britain or Ireland to the said province or provinces: provided also, that the poor persons who shall by means of the said "Emigration Fund" be conveyed to the said province or provinces, shall, as far as possible, be adult persons of the two sexes in equal proportions, and not exceeding the age of thirty years.

7. And be it further enacted, that no poor person having a husband or wife (as the case may be), or a child or children, shall, by means of the said "Emigration Fund," obtain a passage to the said province or provinces, unless the husband or wife (as the case may be), or the child or children of such poor person, shall also be conveyed to the said province or provinces.

8. And be it further enacted, that it shall be lawful for his Majesty, his heirs and successors, by warrant under the sign manual, to be counter-signed by His Majesty's Principal Secretary of State for the Colonies, to appoint a commissioner of public lands to be resident in the said colony, and to act under the orders of the said Board of Commissioners as hereinafter directed.

9. And be it further enacted, that the said commissioners shall and they are hereby empowered to appoint such person or persons as they may think fit Treasurer, Assistant-Surveyors, and other officers, for carrying this act into execution respecting the disposal of the said public lands and the purchase-money thereof, and to remove such Treasurer or Assistant-Surveyors or other officers at their discretion, and on every or any vacancy in the said office of Treasurer, Assistant-Surveyor, or other officer, by removal or by death or otherwise, to appoint, if they see fit, some other person to the said office.

10. And be it further enacted, that it shall and may be lawful for the said commissioners to delegate to the said Colonial Commissioners, Assistant-Surveyor, or other officer, or to any of them, such of the powers and authorities with respect to the disposal of the public lands of the

said province or provinces as the said commissioners shall think fit; and the powers and authorities so delegated, and the delegation thereof, shall be notified in such manner, and such powers and authorities shall be exercised at such places, for such periods, and under such circumstances, and subject to such regulations, as the said commissioners shall direct; and the said commissioners may at any time revoke, recall, alter, or vary all or any of the powers and authorities which shall be so delegated as aforesaid.

11. And be it further enacted, that all monies under the controul of the said Board of Commissioners shall be received and paid by the Treasurers who may be appointed by the said board, and who shall give security for the faithful discharge of their duties to such amount and in such manner as to the said commissioners may seem fit.

12. And be it further enacted, that all accounts of the said Treasurer shall be submitted to the Lords of His Majesty's Treasury, and be audited in the same manner as other public accounts.

13. And be it further enacted, that the said commissioners may and they are hereby empowered from time to time to appoint a secretary, treasurer, and all such clerks, messengers, and officers as they shall think fit, and from time to time, at the discretion of the said commissioners, to remove such secretary, treasurer, clerks, messengers, and officers, or any of them, and to appoint others in their stead.

14. And be it further enacted, that every commissioner and colonial commissioner to be appointed from time to time shall, before he shall enter upon the execution of his office, take the following oath before one of the Judges of his Majesty's Court of Common Pleas, or one of the Barons of the Court of Exchequer, or (in the case of such colonial commissioners) before the judge of one of His Majesty's Courts in the said province or provinces; (that is to say,)

'I, *A. B.* do swear, that I shall faithfully, impartially, and honestly, according to the best of my skill and judgment, execute and fulfil all the powers and duties of a commissioner [or colonial commissioner, as the case may be,] under an act passed in the fifth year of the reign of King William the Fourth, intituled [here set forth the title of this act].'

15. Provided always and be it further enacted, that the salaries to be paid to all such persons as may be appointed to any office under this act, shall be fixed by the Lords of His Majesty's Treasury, and by them shall be revised from time to time as they may deem expedient.

16. And be it further enacted, that the said commissioners shall, at least once in every year, and at such other times and in such form as His Majesty's Principal Secretary of State for the Colonies shall direct, submit to the said Secretary of State a full and particular report of their proceedings; and every such report shall be laid before both Houses of Parliament within six weeks after the receipt of the same by the said Secretary of State, if Parliament be then sitting, or if Parliament be not sitting, then within six weeks after the next meeting thereof.

17. And be it further enacted, that it shall and may be lawful for the said commissioners, previously and until the sale of public lands in the

said province shall have produced a fund sufficient to defray the cost of conveying to the said province or provinces, from time to time, such a number of poor emigrants as may by the said commissioners be thought desirable, from time to time to borrow and take up on bond or otherwise, payable by instalments or otherwise, at interest not exceeding £10 per cent. per annum, any sum or sums of money not exceeding £50,000, for the sole purpose of defraying the costs of the passage of poor emigrants from Great Britain or Ireland to the said province or provinces, by granting and issuing, to any person or persons willing to advance such monies, bonds or obligatory writings under the hands and seals of the said commissioners or of any two of them, which bonds or other obligatory writings shall be termed "South Australia Public Lands Securities;" and all such sum or sums of money, not exceeding in the whole £50,000, so borrowed or taken up by means of the bonds or writings obligatory aforesaid, for the sole purpose aforesaid, shall be borrowed on the credit of and be deemed a charge upon the whole of the fund to be received as the purchase-money of public lands, or as the rent of the common of pasturage of unsold portions thereof; and it shall and may be lawful for the said commissioners from time to time to appropriate all or any part of the monies which may be obtained by the sale of public lands in the said province or provinces to the payment of interest on any such sum or sums borrowed and taken up as aforesaid, or to the repayment of such principal sum or sums.

18. And be it further enacted, that for defraying the necessary costs, charges and expenses of founding the said intended colony, and of providing for the government thereof, and for the expenses of the said commissioners (excepting always the purpose whereunto the said emigration fund is made solely applicable by this act,) and for defraying all costs, charges and expenses incurred in carrying this act into execution, and applying for and obtaining this act, it shall and may be lawful for the said commissioners from time to time to borrow and take up on bond or otherwise, payable by instalments or otherwise, at interest not exceeding £10 per cent. per annum, any sum or sums of money required for the purposes last aforesaid, not exceeding in the whole the sum of £200,000, by granting or issuing to any person or persons willing to advance such monies, bonds or obligatory writings under the hands and seals of the said commissioners or any two of them, which bonds or other obligatory writings shall be termed "South Australia Colonial Revenue Securities;" and all such sum or sums of money by the said commissioners so borrowed and taken up as last aforesaid, shall be and is and are hereby declared to be a charge upon the ordinary revenue or produce of all rates, duties and taxes to be levied and collected as hereinbefore directed within the said province or provinces, and shall be deemed and taken to be a public debt owing by the said province to the holders of the bond or bonds or other writings obligatory by the said commissioners granted for the purposes last aforesaid.

19. And be it further enacted, that it shall and may be lawful for the said commissioners at any time to borrow or take up any sum or sums of money for any of the purposes of this act at a lower rate of interest than any security or securities previously given by them under and by virtue of this act which may then be in force shall bear, and therewith to pay off and discharge any existing security or securities bearing a higher rate of interest as aforesaid.

20. And be it further enacted, that in case it should so happen that the said commissioners shall be unable to raise by the issue of the said colonial revenue securities the whole of the said sum of £200,000, or that the ordinary revenue of the said province or provinces shall be insufficient to discharge the obligations of all or any of the said securities, then and in that case, but not otherwise, the public lands of the said province or provinces then remaining unsold, and the monies to be obtained by the sale thereof, shall be deemed a collateral security for payment of the principal and interest of the said colonial debt: provided always, that no monies obtained by the sale of public lands in the said province or provinces shall be employed in defraying the principal or interest of the said colonial debt so long as any obligation created by the said South Australian Public Lands Securities shall remain undischarged: provided also, that in case, after the discharge of all obligations created by the said South Australian Public Land Securities, any part of the monies obtained by the sale of public lands in the said province or provinces shall be employed to discharge any of the obligations created by the said colonial revenue securities, then and in that case the amount of such deduction from the said emigration fund shall be deemed a colonial debt owing by the said province or provinces to the Colonization Commissioners for South Australia, and be charged upon the ordinary revenue of the said province or provinces.

21. And be it further enacted, that the commissioners nominated and appointed by His Majesty as aforesaid, may sue and be sued in the name or names of any one of such commissioners, or of their secretary, clerk or clerks for the time being; and that no action or suit to be brought or commenced by or against any of the said commissioners in the name or names of any such one of such commissioners, or their secretary or clerk, shall abate or be discontinued by the death or removal of such commissioner, secretary or clerk, or any of them, or by the act of such commissioner, secretary or clerk, or any of them, without the consent of the said commissioners, but that any one of the said commissioners, or the secretary or clerk for the time being to the said commissioners, shall always be deemed to be the plaintiff or defendant (as the case may be) in every such action or suit: provided always, that nothing herein contained shall be deemed, construed or taken to extend to make the commissioners who shall sign, execute, or give any of the bonds or obligatory writings so hereby authorized or directed to be given personally, or their respective estates, lands, or tenements, goods and chattels, or such secretary or clerk, or their or either of their lands and tenements, goods and chattels, liable to the payment of any of the monies so borrowed and secured by reason of their giving any such bonds or securities as aforesaid, or of their being plaintiff or defendant in any such action as aforesaid; but that the costs, charges and expenses of every such commissioner, secretary or clerk, by reason of having been made plaintiff or defendant, or for any contract, act, matter, or thing whatsoever, made or entered into in the *bonâ fide* execution of this act, from time to time to be defrayed by the said commissioners out of the money so borrowed and taken up as aforesaid.

22. And be it further enacted, that no person or persons convicted in any court of justice in Great Britain or Ireland or elsewhere, shall at any time or under any circumstances be transported as a convict to any place within the limits hereinbefore described.

23. And be it further enacted, that it shall and may be lawful for His Majesty, by and with the advice of his Privy Council, to frame, constitute, and establish a constitution or constitutions of local government for any of the said provinces possessing a population of 50,000 souls, in such manner and with such provisoes, limitations and restrictions, as shall to His Majesty, by and with the advice of his Privy Council, be deemed meet and desirable: provided always, that the mode hereinbefore directed of disposing of the public lands of the said province or provinces by sale only, and of the fund obtained by the sale thereof, shall not be liable to be in anywise altered or changed otherwise than by the authority of His Majesty and the consent of parliament: provided also, that in the said constitution of local government for the said province or provinces, provision shall be made for the satisfaction of the obligations of any of the said colonial revenue securities which may be unsatisfied at the time of framing such constitution of the said province or provinces.

24. And be it further enacted, that for the purpose of providing a guarantee or security that no part of the expense of founding and governing the said intended colony shall fall on the mother country, the said commissioners shall and are hereby empowered and required, out of the monies borrowed and taken up as aforesaid on the security of the said South Australian Colonial Revenue Securities, to invest the sum of £20,000 in the purchase of Exchequer bills or other government securities in England, in the names of trustees to be appointed by His Majesty; and the said trustees shall hold the said Exchequer bills, or other government securities, so long as may seem fit to His Majesty's Principal Secretary of State for the Colonies; or shall, in case it shall seem fit to His Majesty's Principal Secretary of State for the Colonies, dispose of the same for any of the purposes to which the monies raised by the issue of the said South Australian Colonial Revenue Securities are hereby made applicable: provided always, that if the said Secretary of State should dispose of any part of the said £20,000, a sum or sums equal to the sum or sums so disposed of shall be invested in the names of the said trustees by the said commissioners, so that the said guarantee or security fund of £20,000 shall not at any time be reduced below that amount: provided always, that the interest and dividends accruing from time to time upon the said Exchequer bills or other government securities, shall be paid to the said commissioners, and by them be devoted to the purposes to which, as hereinbefore directed, the monies to be raised by the issue of the aforesaid South Australian Colonial Revenue Bonds are made applicable.

25. And be it further enacted, that if after the expiration of ten years from the passing of this act the population of the said province or provinces shall be less than 20,000 natural born subjects, then and in that case all the public lands of the said province or provinces which shall then be unsold shall be liable to be disposed of by His Majesty, his heirs and successors, in such manner as to him or them shall seem meet: provided always, that in case any of the obligations created by the said South Australian Public Lands Securities should then be unsatisfied, the amount of such obligations shall be deemed a charge upon the said unsold public lands, and shall be paid to the holders of such securities out of any monies that may be obtained by the sale of the said lands.

26. And be it further enacted, that until the said commissioners shall, by the granting and issuing of bonds and writings obligatory as aforesaid,

that is to say, "South Australian Colonial Revenue Securities," have raised the sum of £20,000, and have invested the same in the purchase of Exchequer bills or other government securities, as hereinbefore directed, and until the persons intending to settle in the said province or provinces and others shall have invested, (either by payment to the said commissioners, or in the names of trustees to be appointed by them,) for the purchase of public lands in the said province or provinces, the sum of £35,000, none of the powers and authorities hereby given to His Majesty, or to the said commissioners, or to any person or persons, except as respects the exercise by the said commissioners of such powers as are required for raising money by means of and on the security of the bonds or securities last aforesaid, and for receiving and investing the aforesaid sum of £35,000 for the purchase of public lands, shall be of any effect, or have any operation whatsoever.

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## COLLECTIONS OF COLONIAL LAWS.

The following Paper has been thought worthy of insertion, as showing at one view the collection of Colonial Laws known in this country at the time of its date.

Return of Copies of all Public Acts and Proceedings of the Legislative Assemblies printed by the several Colonies, as far as the same can at present be complied with by the Colonial Department.

26th March, 1828.

F. L. GOWER.

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	II.	1 Geo. 3	—	32 Geo. 3
	III.	33 Geo. 3	—	39 Geo. 5
	IV.	40 Geo. 3	—	44 Geo. 3
	V.	45 Geo. 3	—	50 Geo. 3
	VI.	51 Geo. 3	—	57 Geo. 3
	VII.	58 Geo. 3	—	4 Geo. 4
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