

SMALL DEBT COURTS.

Details of the Magistracy—Plan of Improvement.

TO THE EDITOR OF THE COLONIAL HERALD.

Sir:—It appears that a Circular has lately been addressed to the Commissioners of the Small Debt Courts throughout the Island, calling upon them to give in a detailed account of their fees, for the last year, in order, evidently, to ascertain the aggregate amount of the profits arising from their offices. What the intention of the procedure may be, I am not exactly aware; but one would naturally suppose, on the first blush of the thing, that it had in view the remodelling of the present Act, and establishing some better mode of enabling creditors to recover their debts. There are very few institutions in this world that can boast of perfection, and precious few of the statutes, of even the most enlightened legislatures, that can bear the test of rigid examination; and that the Act in question may possibly admit of improvement, I shall not attempt to deny; but then, in making this improvement, the most cautious deliberation will be required. I have spent the greater part of my life in this Island, and have formed my opinions—in matters that relate to public advantage—not from visionary speculations, but from actual observation, founded on the various and multiform changes that have taken place in the position of the country, for the last forty years. As I have already said, I grant that the Small Debt Act may admit of improvements; it has, however, worked extremely well, from its introduction to the present period, and the thing should be seriously considered, before we determine on its annulment. That it has been abused—shamefully abused—in some of the districts of the Island, I believe to be the case; but this has not arisen from any defect in the Act, but from the unhappy and injudicious appointment of a few needy individuals as Commissioners, who have made a trade of their offices, and promoted litigation, for the purposes of family maintenance. A variety of conjectures have been entertained, as to the intended project, if a change be decidedly in contemplation. Some think that the present Act will be repealed, and the collection of small debts, as formerly, thrown open to the Magistracy generally. If this system should be adopted, I have no hesitation in saying, that the country would be ruined. It is a startling expression, I confess; but I ground my opinion of what would inevitably ensue, from what did take place antecedent to the passing of the present Act. And here it will be necessary, Sir, to give you some idea of the practices of the Magistracy in olden times, that the public, and Colonial Assembly, now in Session, may be enabled to form a just and correct estimate of the comparative advantages of the former and present system, and come to a proper conclusion on the subject. I well remember when the former Act was in full operation—when every "J. P." had the power of issuing summonses; and to give you a true description of the iniquities then practised would require a greater power of graphic delineation than I possess. Every country Justice, under the former system, with a few honourable exceptions, had his shop for the manufacturing of lawsuits. They issued their summonses on credit, and the payment was usually made in butter, eggs, or any other commodity that the judicial party had previously agreed upon. Every country constable had his favourite Justice to deal with, and there was a thorough and perfect understanding between the Court and its officers. The constable hunted out business for the Justice, and the latter, in return, gave him all his processes to serve. But this was not the worst feature of the case. The plaintiff had it in his power to select his own Magistrate, who, from motives of nationality, religious creed, family connection, or otherwise, he had reason to think, would decide in his favour. The Justices and constables were frequently in debt to the country dealer, and he was often persuaded and induced to attack his ledger delinquents for the purpose of clearing off their scores by a credit for fees. As summonses were issued on tick, actions were frequently instituted on experiment, with a perfect understanding between the Court and the suitor, that if nothing was obtained, nothing, in the shape of costs, would be demanded. In consequence of such nefarious practices, a spirit of litigation was kept up in the country, and perpetual broils were the natural and unhappy result. Even this immaculate Town, remarkable for its purity, was not exempt from contamination. Here there were some ten or twelve "J. P.'s," anxious for employment, and, with pen in hand, ready for action; but the whole business of the Town was unfortunately engrossed by two or three individuals, who appeared to be great popular favourites. Constables played into their hands, and their offices were abundantly productive. I recollect to have heard one of these traders assert, that he had issued upwards of two hundred summonses in one week. This monopoly excited the jealousy of the unemployed, and a dead set was made by them at the traders. This stormy collision among the "J. P.'s" soon became known to the Governor, who adopted a most judicious method of restoring order and tranquillity. He summoned the whole concern to appear at his quarters—stated what he had heard, and recommended that a roster of their names should forthwith be formed, according to seniority of standing in the commission of the Peace; that two, in rotation, should sit monthly, and that the rest should remain quiescent, until it came to their turn; that, by this arrangement, every one would have an equal share in the profits, and besides—and which weighed more particularly with him—all would be made acquainted with the duties of the office. One of the traders remonstrated, and observed, that such a measure was not contemplated by the Act, and that he was at liberty to issue summonses whenever he pleased; but His Excellency very wisely insisted upon the adoption of the plan, and it was accordingly carried into execution. But, although this settlement of grievances did much good, it did not entirely remove the evil. Constables still had their favourite Magistrates; they would wait until it came to their turn of duty, and then bring in, cut and dry, for their benefit, a long list of names for summonses. If a Plaintiff wished to try a cause before any particular Justice, that he thought was disposed to serve him, he had only to wait for his sitting, and then bring his action. Here, too, summonses were issued on credit; the institution of law-suits thus rendered easy, and litigation thereby extensively promoted. Mercantile accounts were frequently scored off by fees, and business was done on terms of mutual convenience. Matters had now come to a crisis. Something was to be done, but no one knew how to proceed. At length, the then Attorney General (Mr. Johnston), an active, intelligent and determined public officer, turned his attention to the state of the Magistracy throughout the country; and being, at the time, a member of the Colonial Assembly, in the Session of 1825, he brought in a Bill, appointing a select number of Commissioners, to hear and determine in matters of small debt. It passed without opposition into an Act, and thus the whole pestilential system of judicial traffic in the Magistracy was at once, and effectually, extinguished. The original Act, with its occasional amendments, worked extremely well; and, after a trial of eight years, in the Session of 1832, it again came under legislative revision, when, after having had a few additional clauses introduced, and being consolidated, with its amendments, it was re-enacted, and now forms the existing statute, under which small debts are recovered throughout the Island. And here let me pause, and ask a question or two, before we proceed further. If the Act was bad, why was it re-enacted in 1832? The majority of the House of Assembly were gentlemen from the country districts, and, if they had considered it objectionable, they most assuredly would have moved for its repeal; but no such attempt was then, or has been subsequently, made; and why, I again ask, if the Act is essentially defective, has it been allowed to continue in full operation for upwards of eighteen years, and without one single Petition from any quarter for its rescission? Facts are stubborn things, and the projectors of any new scheme should weigh the matter well, before they propose a change in measures of such importance. Let the records of the Supreme Court be searched, and it will be found, that where there is one appeal from the decision of Commissioners under the present, there were twenty under the operation of the former Act. Throw the statute open, and you will have the same scenes of traffic and irregularity repeated that had so long disgraced the country, for as the population is now

materially extended, and nearly three times the number of "J. P." functionaries than formerly, scattered through the Island, the effects of the open system would be deplorable. Applications were frequently made to our former Governors for Commissionerships, but the invariable answer has been, "No, the fewer there are the better," for aught I know, under the secret, but certainly not very flattering impression, that, if any, there was less mischief to be apprehended from the few than the many. Possibly, Mr. Editor, the projector of innovation may be a "J. P." himself, and may sigh for participation in the profits of office. If resident in or near the metropolis, he might be grievously disappointed in his expectations, for I can assure him, that under the open system, the whole business of the Town—as formerly—would be engrossed by two or three individuals, unless the rotation plan be again enforced. Persons acquire a habit of going to particular Magistrates—others are recommended by them to the same shop; a custom is thus established, and people, it would seem, absurdly begin to think that the ends of justice cannot be obtained in any other quarter. The employed have only to keep well with the public—and particularly with the man in trade—by a mutual system of convenient dealing—taking care, at all times, to secure the friendship of the acting and active constables, and they have nothing to dread from the envy of their opponents. The constable, formerly, was a much more important character in the community than people generally imagined. He was a sort of jackal to the Justice, and in the country districts, not only ferreted out work for him, but often, good naturedly, in cases of difficulty, assisted the court in its decisions. No one ever thought of applying directly, in person, to a "J. P." for summonses. He gave a list of the persons to be sued to the constable, who employed his favourite Magistrate, and hence appeared the necessity for the Justice's keeping on the best possible terms with these essentially requisite personages. I fear, Mr. Editor, that I shall weary the attention of your readers, but the matter in discussion is of a serious nature, and they must bear with me a little longer. If the hearing and determining cases of small debt be thrown open to the Magistracy generally, how will the country be benefited by the measure? More than half of the present Commissioners are Justices of the Peace, and, although they may cease to act in the capacity of Commissioners, they would be equally eligible and efficient as Justices, while any deficiency that might occur, by the removal of Commissioners, who may not be Justices, would be supplied, in a three-fold ratio, by the neighbouring "J. P.'s" who would come in, slap dash, with joy and gladness, to fill up their vacancies. By some, the present system is called a monopoly. The same mode of reasoning may be applied to every office-holder in the Colony, for when people are disposed to find fault, an envious mind will have no difficulty in supplying arguments in support of the most absurd assertions. The present Act, I again contend, has worked well, and because a few needy individuals, in some of the districts, have made a trade of their offices, it is reasonable to implicate the system on account of such injudicious appointments, and endeavour to displace from office, and thus indirectly vilify, a number of gentlemen of integrity to whom the breath of slander cannot attach; and all this to gratify a few envious aspirants for employment, who, unacquainted with the real wants of the country, and labouring under a sort of restless *cacoethes* for statute-making, seem anxiously disposed to turn every thing upside down, to meet their own peculiar views of legislative perfection. Although the present statute has my entire approbation, a better plan may still be adopted; and I shall now proceed to suggest it, for the consideration of the House of Assembly. I would continue the system of monthly sittings and Commissioners, but I would limit, to a certain annual amount, the fees or profits of the Commissioners. The returns now called for, and which, of course, are to be laid before the House, will enable it to form a scale of allowance, and carry the proposed measure into execution. I would appoint three Commissioners for Charlottetown, and never less than two in the different districts that required them. These Commissioners should be compelled to keep Clerks, who are to issue the processes and keep the records of the Court; and, as they are to be the purse-bearers, they should be called upon to find securities for the faithful discharge of their respective duties. A return of the aggregate amount of fees should be made quarterly, or half-yearly, by the Clerk, out of which he and the Commissioners should be remunerated for their services, according to the scale of allowance—the surplus, if any, to be handed over to the Treasurer, for expenditure on the Roads and Bridges of the Counties in which the Courts are held. If the amount of fees should be insufficient to pay the maximum allowance to Commissioners, according to the scale, they must abide by the deficiency or loss; but the stipend of the Clerk should remain undiminished, as his responsibility is constantly and uniformly the same. A Committee of the House, from the returns submitted to them, could easily frame a scale of allowance, and which may be increased or diminished at future periods, in proportion to the business of the Court. To enter more particularly into detail, as it respects Charlottetown—and which may afford assistance in proportioning the allowance throughout the Island—I would give each of the three Commissioners Twenty-four Pounds each, and their Clerk Thirty Pounds annually, with an allowance of Five Pounds for blanks and contingencies, making, in toto, a yearly sum of One hundred and seven Pounds, and which should be the maximum allowance, until altered by legislative arrangement. I am quite certain that this plan would work well, and give general satisfaction, and the public funds would be materially benefited by its adoption. If such a measure be accomplished, the office of a Commissioner would cease to be a lucrative one, and the object of ardent desire; and a permanently effectual stop would be put to official trade, traffic, and action-hunting, throughout the Island. Whether this, or any other plan, be adopted by the House of Assembly, one thing should be steadily kept in view—and let me here forcibly impress it on the minds of its members—NEVER TO ALLOW A PLAINTIFF, IN MATTERS OF DEBT, TO CHOOSE HIS OWN MAGISTRATE. Under peculiar circumstances, this power might be desirable; but the general principle is a dangerous one, and ought to be carefully guarded against; for such is the force of national and religious prejudice, personal obligation, family connexion, and the various other ties and partialities that cement men together in the ordinary walks of life, that, in a country like this, it would be found extremely difficult, if not utterly impracticable, in every instance, to obtain decisions free from and unfettered by interested motives. I have now done, Mr. Editor, and beg to apologize for the length of this communication. The subject required it, and must plead my excuse. I solemnly assure you, Sir, that in the foregoing statements I have neither exaggerated nor embellished facts—I have told a plain, unvarnished tale—and if what I have written shall be approved of by the public, or afford any useful hints to the Colonial Assembly, for which this letter is more particularly intended, my feeble exertions to promote the public welfare will meet with an ample reward. CLAUDIUS.

voices are heard at once, and, at the moment of collision, the Chief Justice of England, I am inclined to think, would find it no easy task to preserve order, and restrain the volubility of these angry disputants. True, they might be effectually silenced, by sending the whole concern to jail; but, in such case, the cause must be struck off the docket, and inconveniently, perhaps, stand over for a future re-hearing. (From the London Spectator.) The vast bay that divides America into two continents has been the theatre of some strange occurrences, of kinds unhappily too common in that quarter, and not likely to be followed by special results of much importance, but yet more than common interest. A province of Mexico, Texas, received a strong infusion of the United States people, whose countrymen desired to place a barrier between themselves and the Republic that repudiated slavery; and on the strength of that sympathy, and of the multiplying Yankee rifles, Texas shook itself loose.—Another Mexican Province, Yucatan, catching the contagion of insubordination, also desired to be an independent state; and Texas "sympathised" with its rebellious sister. Mexico, in an interval of comparative tranquillity, takes measures to coerce Yucatan, and to resent Texan aggression. On the other side, "sympathy" for Texas in the United States has risen to the Presidential chair; and Mr. Tyler, it is said, contemplates active hostilities against Mexico, in behalf of the border state. Central America has just despatched one of its leaders: Moarzan, after a life of fighting, has been assassinated by his own subjects, at his capital; a bloody illustration of the state of society among the semi-barbarous bandit population of our faithful ally. In Cuba, Lord Palmerston's Anti-Slavery Consul, Mr. Turnbull, has got into a scrape, which on the present showing, is unaccountable. He was removed from his post because his sectarian zeal unfitted him for consular duties; but he re-appears, in a small sloop, manned by blacks, at a provincial town, and professes to have authority from the British Government to demand the liberation of all blacks introduced into the place within the last twenty years! He was arrested, and was last to be sent as a prisoner to Havana, in which he last lived as Consul. Cuba cannot suffer people who talk of man's personal freedom to go at large. It is doubtful which is most to be admired, the state of a country which makes it necessary to put restraint on the enthusiast, or the enthusiast's own rashness. The whole of that region of which we have named three angels is sitting with the conflicting elements of social and political revolt. First peopled by Spain (after it had despoiled itself of Arabian civilization) in a spirit of rapine, the people have been further barbarised by the wilderness of the region or further contaminated by the institutions of slavery. They are sunk to the lowest depths of anarchy and social corruption. Yet is there ready ingress for the opinions of Europe of the nineteenth century, which forced in among uncongenial people—as we noticed last week, in the case of the European counterpart of Central America, Spain—only add to the confusion. It would seem as if the better that opinions are in themselves, when a people are unprepared to receive them, the greater is the impulse given to the evils they are meant to cure. The people on whom they are thus untimely thrust are not fit to profit by them—they can only resent them. POWER OF THE VOICE OVER CHILDREN.—It is usual to attempt the management of children either by corporal punishment, or by rewards addressed to the senses, or by words alone. There is one other means of government, the power and importance of which are seldom regarded. I refer to the human voice. A blow may be inflicted on a child, accompanied by words so uttered as to counteract entirely its intended effect. Or the parent may use language in the correction of the child, not objectionable in itself, yet spoken in a tone which more than defeats its influence. Let any one endeavour to recall the image of a fond mother, long since at rest in heaven. Her sweet smile and ever-clear countenance are brought vividly to recollection. So also is her voice; and blessed is that parent who is endowed with a pleasing utterance. What is it which lulls the infant to repose? It is no array of mere words. There is no charm to the untaught one in letters, syllables, sentences. It is the sound which strikes its little ear, that soothes and composes it to sleep. A few notes, however unskillfully arranged, if uttered in a soft tone, are found to possess a magic influence. Think we that this influence is confined to the cradle? No, it is diffused over every age, and ceases not while the child remains under the parental roof. Is the boy growing rude in manner, and boisterous in speech? I know of no instrument so sure to controul these tendencies as the gentle tones of a mother. She who speaks to her son harshly, does but give to his conduct the sanction of her own example. She pours oil into the already raging flame. In the pressure of duty, we are liable to utter ourselves hastily to our children. Perhaps a threat is expressed in a loud and authoritative tone. Instead of allaying the passions of a child, it serves directly to increase them. Every fretful expression awakens in him the same spirit which produced it. So does a pleasant voice call up agreeable feelings. Whatever disposition we would encourage in a child, the same we should manifest in the tone with which we address him.—Christian Register. INTemperance.—We extract the following eloquent passage from a letter written by the Honourable William Wirt, in 1841:—"Intemperance paralyzes the arm, the brain, the heart. All the best affections, all the energies of the mind, wither under its influence. The man becomes a maniac, and is locked up in the hospital, or imbrues his hands in the blood of his wife and children, and is sent to the gallows or doomed to the Penitentiary; or, if he escapes these consequences, he becomes a walking pestilence on the earth, miserable in himself, and loathsome to all who behold him. How often do we see, too, whole families contaminated by the vicious example of the parents—husbands, wives, sons and daughters, all drunkards and furies; sometimes wives murdering their husbands, at others, husbands their wives, and worst of all, if worse can be in such a group of horrors, children murdering their parents. But below this grade of crime, how much is there of unseen and untold misery throughout our otherwise happy land, proceeding from this fatal cause alone. I am persuaded that if we could have a statistical survey and report of the affairs of unhappy families and individuals, with the cause of their misery annexed, we should find in nine cases out of ten, if not a still greater proportion, resulting from the use of ardent spirits alone. With this conviction, which seems to have become universal among reflecting men, the apathy shown to the continuance of the evil can only be ascribed to the circumstance, that the mischief, though verbally admitted, is not seen and felt in all its enormity. If some fatal plague, of a contagious character, were imported into our country, and had commenced its ravages in our cities, we should see most prompt and vigorous measures at once adopted to repress and extinguish it; but what are the most fearful plagues that ever carried death and havoc in their train through the eastern countries compared with this? They are only occasional, this is perennial. They are confined by climate or place; this malady is of all climates and all times and places. They kill the body at once, this consumes both body and soul by a lingering and dreadful death, involving the dearest connexions in the vortex of ruin. What parent, however exemplary himself, can ever feel that his son is safe while this living fountain of poison is within his reach? God grant that it may soon become a fountain sealed, in our country at last. What a relief, how delightful would it be to turn from the awful and horrid past to the pure, peaceful and happy future! to see the springs of life and feeling and intelligence renewed on every hand; health, industry and prosperity glowing around us; the altars of domestic peace and love, rekindled in every family; and the religion of the Saviour presented with a fair field for its celestial action." RUDICLE.—The fatal fondness for indulging in a spirit of ridicule, and the injurious and irreparable consequences which sometimes attend the too severe reply, can never be condemned with more asperity than it deserves; not to offend is the first step towards pleasing; to give pain is as much an offence against humanity as against good breeding; and surely it is as well to abstain from an action because it is sinful, as because it is impolite.—Dr. Blair.

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CHARLOTTETOWN: Printed and published by COOPER & BROWN, Printers to the Hon. the House of Assembly, at their Office, East corner of Pownal and Water Streets.—TERMS, 12s. per annum, payable in advance; or 15s. per annum, half yearly in advance.