

MONTHLY COMMENTS

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IN MEMORIAM

RICHARD PITT RERRIE

A sound Lawyer of great integrity.

CAUSERIES.

The short-cut appears to be a feature, if not an integral part, of Jamaican mentality. While very often the short-cut may be a bad thing, it is not always necessarily so. Very few things are entirely bad but thinking makes them so. Nevertheless, although insidiously attractive, the short-cut more often than not is a tedious and perilous way to progress. Many short-cuts betoken indolence, inefficiency and/or irresponsibility. Often to the short-cutter to travel by short-cut seems to be more important than to arrive.

The literal or topographical short-cut (sometimes difficult and perilous) often assails property rights and becomes both a thorn and a burr.

Reversing a motor car on a one-way street is a dangerous and irresponsible short-cut. Incidentally the victim is deprived of the slender assurance that death may come to him only from a prescribed direction.

The pot-holes in our streets may indicate the inefficient and irresponsible short-cut in street-paving; gully-paving may be a short-cut evasion of flood control in its native habitat—the mountains; afforestation without prior establishment of herbage may be a doubtful short-cut; violence of word or deed may be a dangerous and unworthy short-cut to political power; the trade union set-up in Jamaica may also be a dangerous and irresponsible short-cut to political power; avid and rabid reach for political power may be an irresponsible short-cut to service; discourtesy certainly is; as also is the omission to train for service; and the evasion of the policy of the just price.

While Government's educational policy as well as Federation might have been avoidable short-cuts, one can see honest motivation behind the facade of both movements; and history may well make good things out of these short-cuts, the one to secondary education and certificates, the other to Dominion Status. And the same thoughts apply to the introduction on a large scale of the foreign capital of absentee proprietors as in Canada, Latin America and elsewhere.

Short-cutting becomes compulsive when an administration, loaded with a heritage of former neglect is faced with imminent present danger. And yet! And yet! Beware of avoidable short-cuts.

GEORGE WILLIAM GORDON (Continued)

Reference to Gordon's activities from time to time in the House of Assembly will serve to indicate both his outlook on current matters of interest and his relations with his colleagues in the House. It will be observed that although he was himself a property owner, he did not hesitate to criticise the conduct of property owners, and that although he was intensely religious, he insisted that public funds should not be used for the support of special denominations. When his sense of justice or propriety was aroused his speech was somewhat impassioned. Sensing that his colleagues often failed or neglected to see the obvious. His form of address was somewhat didactic. Both these features were resented by his colleagues, who however did not fail to testify to Gordon's general amiability and lack of personal resentment.

On April 22, 1863, Gordon spoke on Wellesley Bourke's bill which proposed that the bi-cameral legislature should be abolished and that a one-chamber House, partly nominated and partly elected, should be substituted. The people, he said, would be considerably alarmed if the bill was admitted in principle, because it dealt a blow to their rights and privileges, would narrow the privileges of the Assembly and throw too much power into the hands of the Governor. Bourke's bill was supported by eleven members of the House, called by the Falmouth Post "demolitionists". Osborn's remark is illuminating: "I have heard it said that the wealth and respectability of the country are wearing out and therefore the House of Assembly should be abolished; but is there any truth in this?" It is interesting to note that the Bill of 1865 carrying out Bourke's ideas shortly before the final surrender of the Constitution, contained the preamble: "Whereas in consequence of the altered state of circumstances and society in this island it is expedient to make some change in its political constitution."

On April 23 Gordon introduced a bill prohibiting government grants to religious denominations: "I hold it as a cardinal principle that the state has no right to support religion. Every sect is bound to support its own churches. If we have a state religion forced on us, we must continue it until force of circumstances also gets rid of it; but if the House is to make grants to the dissenting churches, they will become as corrupt as the state church is. I hope we will soon follow the example of Canada and Australia and put an end to this connection of Church and state." Wellesley Bourke was Gordon's only supporter on the bill.

On the same day Gordon successfully objected to the stopping of the subsidy for the geological survey which was in progress.

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On the 27th he spoke strongly on the Immigration Bill relating to East Indian coolies: "You are doing an immense injury and injustice to the people by taxing them to bring labourers to this country to work amongst them for the benefit of rich proprietors who luxuriate in continental life; but after you have introduced these immigrants here, you compel them to look out for themselves. After you have brought all the misery on the country, for the coolies are no incubus on you, you propose to reduce the tax you are required to pay from 30/- to 20/-. I do not know what will satisfy the planters of Jamaica. They are always crying out: give, give, give; and are never happy . . . I believe that the importation of these coolies is a retribution on the land for the neglect of the people . . . I know that I speak strongly — I speak feelingly — and I do hope that I will be excused. You are bound to protect the population, and you should do so, I conjure you by the high authority of heaven to do them justice. If you had brought forward a bill for an asylum for enforcing protection of the people, you would have been doing your duty to your God, but I am astonished that you should come forward and ask to be relieved of a portion of the tax sanctioned by law for the services of the immigrants." Gordon stood alone on the matter.

On April 28 Gordon opposed the abolition of the Office of Official Assignee, which then took the place of our modern Trustee in Bankruptcy. On the next day he spoke on the bill dealing with the qualification of voters: "The public interest is overlooked; but the voice of the people must be heard; and the public weal must be promoted, so long as you have the means of doing so. The other night you refused to remove the 10/- tax on petitions, and now there is a latent feeling on your part not to absolve the 10/- on the voting. The people demanded at the last general election that this tax should be removed and every candidate desiring to be popular pledged himself to do so; but now that honourable members have carried out their personal desire, they wish to forget their pledges. William Stevenson said that the sugar cane was the bitter root of Jamaica, and Jamaica never would be prosperous until every cane was rooted out the soil: but notwithstanding this, your whole respect is for sugar and rum; and you have none for coffee, wax and arrowroot. The export tax promotes the manufacture of sugar and rum; and you will not remove the election tax on account of sugar and rum; but we have been drowned in rum and covered with molasses."

In October, the Speaker, Hon. C. M. Morales, wrote to the Clerk of the Assembly that he was still unable from severe indisposition to discharge the duties of his office, and asked the House to again extend indulgence by applying to the Lieutenant-Governor for leave to appoint a temporary acting Speaker, Gordon said: "I think the letter of the Speaker is very vague and unsatisfactory . . . In dealing with the office of Speaker, I think it is our duty to see that the utmost integrity and the utmost propriety regulate our proceedings . . . Unhappily after long and faithful service the health of his honour has been impaired. He applied twice for leave and obtained it, and now he comes and asks

for the third time that he should be indulged further and on what plea? That he is still unable from severe indisposition to discharge the duties of his office . . . The letter does not state that the Speaker will at any future time take his seat; but he asks for general leave . . . The office is a very important one, and ought always to be filled . . . I take it that the long services of the Speaker give him a claim on the country. He deserves well of the country; and I shall be glad to see him provided for; but I do not approve of the course that is being pursued."

On October 27, the old 34th rule of the Assembly was read: That no official responsible to the Assembly &c should be qualified to sit or vote in the House. Feeling ran somewhat high on the matter by reason of the fact that the Island Engineer, whose conduct was under investigation by the House, had, with the support of the Government and the clergy been elected as a member of the House at the general elections which had been precipitated by Government, when dissatisfied with the actions of the House. Gordon in a lengthy speech supported the rule. Jordon said that he was in favour of the rule; but was not prepared to set up his opinion against that of the law officers of the Crown of England. Jordon voted for striking out the rule.

In supporting the rule (along with Osborn and many others) Gordon said: "If you expunge the rule, you trench on the privileges of the people, and you will be suffering your affairs to be controlled by a tyrant master, an exacting master, an extravagant master, an ignorant master. Do we not remember all that occurred last year in regard to this rule? Do we not remember that the wrongs of the country were left unredressed while the Government continued their evil course? Do we forget the influence that the Government exercised over the elections? I feel that this rule restrained to a great extent the influence of the vicious parties then in power. (Eyre had been compelled after a vote of censure to dismiss his Executive Committee and appoint a new Committee). The rule has never done any harm; it is good; and it is essential for upholding the character of the House and the maintenance of the rights of the people. The people feel that those who support it are serving them faithfully, and not squandering their money and acting ostentatiously. The rule conserves the best interests of the country, and it would be dangerous to do away with it . . ."

(To be continued)

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THE RISE AND SPREAD OF AMERICANISM.

I have noted in passing the dualism which has always pervaded American life and thought, lofty idealism, side by side with a hard core of ruthless pragmatism, talking and thinking freedom while outraging elementary principles of freedom at home and abroad. One is reminded of Paul's description of man: the bad in us dragging down the good in us. Sometimes in America the dualism becomes apparent in single individuals, notably J. Pierpont Morgan and other American multimillionaires, sometimes in one section of the community as opposed to another, sometimes in the dichotomy appearing within the Administration or the presidential entourage.

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President Woodrow Wilson was an outstanding example of American idealism run riot. He saw history, and particularly American history, in a virtuous role of idealistic democracy. In his eyes a Democracy could never be an aggressor. The only things that America might fight for were her "convictions, character and honour."

It may be remembered that after the Panama Canal incident between Theodore Roosevelt and Colombia, Wilson after he became President gave Colombia treaty rights in respect of the Canal and a solatium of \$25,000,000. Roosevelt regarded this as a reflection on his conduct.

When on April 2, 1917 Wilson sought from Congress a declaration of war against Germany, his object was to "vindicate the principles of peace and justice," to insist "that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the civilized citizens of civilized states." The Corporate or Government conscience was to conform with the theoretical individual conscience.

It has since been recognized that the most important underlying cause of World War I was the 'increasing strains' of competitive capitalism. Capital and the military, "all dressed up" were bound to break out in a search for "somewhere to go". The Treaty of Versailles, as well as President Wilson, failed to take this into account. The Peace Terms were sterile; and, like the peace terms at Potsdam some quarter of a century later, were no sooner arrived at than prevailing currents and forces contributed to the undoing of their fundamental objective to put an end to future wars. After World War I the peace was lost because the victor nations thought in terms of patching up the old crazy-quilt of laissez faire imperialistic capitalism while the defeated nations (for Germany and Russia were in effect defeated nations) thought or tried to think in terms of a completely new orientation, which the victor nations neither understood nor tried to further. Anachronistic nineteenth century met the forward-looking twentieth century in a headlong collision. The peoples of Russia and Germany were hindered rather than helped. While the helpless young men saw visions, the powerful old men continued to dream dreams.

As far as America was concerned, the League of Nations foundered on Article X. As some, led by Senator Lodge, saw it, this fettered the sovereign powers of the nation. Others, like Senator Borah, saw in it a national resolve to preserve the unjust and anachronistic status quo of imperialistic colonialism. In the criss-cross of conflicting motivations, Wilson lost vitally needed support; and the architect of the League of Nations himself unwittingly ruined all his own hopes of American participation. In so far as there was a direct cleavage of opinion between the oppositionists, this cleavage came not between Isolationists and Internationalists but between Expansionists and non-Expansionists. Borah attacked the Treaty on the ground that it committed the United States to oppose colonial movements for self-government and to support the unjust status quo, a course to which the United

States actually found itself also committed after World War II. Senator Borah's criticism was forthright: "Four great powers representing the dominant people will rule one-half of the inhabitants of the globe as subject peoples—a rule by force; and we shall be party to the rule by force. There is no other way in which you can keep people in subjection . . . That is the scheme proposed by the League . . . You must respect not territorial boundaries nor territorial integrity, but you must respect and preserve the sentiments and passions for justice which God in his infinite wisdom has planted so deep in the human heart that no form of tyranny can wholly uproot and kill. Respect nationality, (we should say "nationalism") respect justice, respect freedom, and you may have some hope of peace . . . We are told that this treaty means peace. But your treaty does not mean peace; it means war."

When Senator Lodge claimed that Article X pledged the United States to guarantee the political independence and the territorial integrity against external aggression of every nation on earth, President Wilson replied that while Article X was the backbone of the covenant, the Council of the League could only advise upon means. Before any advice could be given, a unanimous vote was required. The obligation was a moral not a legal obligation and left Congress absolutely free to put its own interpretation in all cases that called for action. Here was the old homocousian controversy of the fourth century come back to plague us with all the obstinacy that had prevailed between the parties to the dispute of an old theological debate. Surely with some give and take, the issue might have been resolved.

One American policy-making syllogistic conclusion emerged from the experiences of World War I: Economic depression and war tended to produce revolution; revolution tended to disturb American ideals and property rights; and it became a basic policy of America to counter these factors. America became a stout supporter of the status quo.

The accumulation of great wealth in few hands resulted in the huge concerns doing many things that were open to criticism. Sometimes they ruined small business-men by cutting prices; sometimes they controlled so many mills that they were able to raise prices at the expense of the consumer. About 1885 there was public clamour on the subject which resulted in the famous Sherman Anti-Trust Act of 1890. Passing a law was one thing, the will to enforce it was another. For the most part the law has been circumvented. By 1930 (forty years after the law had been in force) four great multimillionaire houses had notoriously made a complete mockery of the law; and a United States government report was to record that eight groups of what was known as finance capital controlled sixty per cent of large scale industry, transportation, public utilities and banking in the United States.

Finance capital was the merging of banking and industrial capital; and the conquest of the United States by finance capital led to the economic conquest of the world by American finance capital, as the owners of finance capital sought new fields for investment, when the investment field in the United

States appeared to be insufficient. For example, between 1880 and 1890 the production of pig iron in the U.S. which had increased almost 150 per cent above the previous decade, began to drop steadily, and in 1897 was only five per cent higher than in 1890. Unemployment mounted; and strikes became more frequent. The U.S., formerly an importer of capital, became a significant exporter of capital; but other countries were already established in the foreign field.

The oil and electric trusts had already been moving in the direction of making cartel arrangements with foreign investors. The U.S. was well on the road to imperialism or colonization by financial investment, as was recognized by American industrialists and even by the military. Major General Smedley D. Butler (in *Common Sense* 1935) indicated that he had no illusions as to the rule of the military in the service of American finance capital. The American method however proved more flexible than the ancient methods of direct colonization; and were indeed more liberal; for basically the American tradition was democratic. This did not however prevent the support even by military means of undemocratic status quo, or subventions in aid of the suppression of national liberation movements abroad.

American economic success at home and abroad is attributed by Americans to "the American way of life," "the American know-how", "the free enterprise system"; but it should be remembered also that the American terrain was remote from the devastation of the two world wars, while the tremendous demands of the war made America the wealthy world purveyor of money and materials. The two wars made America richer while making many other parts of the world poorer.

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LEGAL MISCELLANY.

In May 1960 (Comments No. 1 of the current volume) the anomaly in our laws relating to the breaking of entails in real estate in Jamaica was discussed. There are many other less abstruse anomalies in our laws which are remediable but which remain neglected under the pressure of other legislative activities. In January 1961 (Comments No. 9 of the current volume) I also discussed briefly certain aspects of the law relating to the commissions payable to personal representatives of deceased persons. There is or may however be anomalies also in the general body of this relevant law which may be of interest to readers of the Comments. The anomalies, if they are anomalies, were introduced in the year 1937 by the Intestates Estates Law of that year, which not only changed the rules of devolution of the estate or property of a deceased intestate, but incidentally also made the personal representative of the deceased intestate a trustee endowed with a trust for sale of all the property (both real and personal) of the deceased intestate.

It may be remembered (see Vol. 4. No. 9) that the Court decided that a personal representative is not entitled to commissions on real estate, that is on transferring and handing over the corpus (of the real

estate) to the beneficiary. Two questions arise: (a) Does the Intestates Estate Law by its trust for sale automatically effect a conversion of realty into personalty, thus entitling the personal representative to commissions on real estate? Furthermore, (b) does the law deprive a beneficiary of his inherent right to demand that his property be not sold but be handed over to him intact and unconverted subject to due payment by him of debts and testamentary expenses chargeable thereon and payable thereout?

If (a) is answered in the affirmative, then the anomaly arises that the property of an intestate suffers charges which are not imposed on the property of a testator—another terror in death for the negligent or unwary intestate. If (b) is answered in the affirmative, another terror appears to be added in life for a beneficiary.

Intestacy often brings the Administrator General into the picture. The practice of the Administrator General is to charge commissions on the real estate in the case of intestacy by reason of the trust for sale; but, so far as I am aware, the point has not been submitted for judicial interpretation or decision.

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THE INVOLUTION OF RACE PREJUDICE

In Volume 1 of the Comments (1954-1956) there appeared in serial form a short history of colour prejudice in Jamaica. Much water has run under the bridge since 1956. A short supplemental note may therefore be in order.

With the introduction of negroes as slaves there was established what might be called a reciprocal superiority-inferiority complex as between whites and negroes. With miscegenation there came the obvious "touch of the tar-brush" on the coloured folk.

Slow economic emancipation, first among the coloured and later among the blacks, brought gradual social emancipation, which was more or less brought to fruition in our day with adult suffrage and the political emergence of a composite black and coloured majority over the whites and near-whites.

Standards of value based on pigmentation have slowly but surely lost their categorical imperative. So that now Jamaica may well be regarded as the spiritual as well as the topographical home of island natives of all shades, as well as of island settlers who may be regarded as having permanently changed their domicile of origin. The early social prejudices against Jews, Chinese and Syrians have also undergone involution in their several ways.

With the swing of the pendulum great care should be exercised, especially among the blacks, lest in their social, economic and political reorientation they be tempted to emulate the old-time intolerance of the whites and coloured.

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REPRODUCED FROM LIFE

"Marnin' Missis". "Why yu seh marnin Missis? Doant we all equal now?" "Me fren, Buckra did always seh howdye. Me will always seh howdye. If me is equal to buckra, me mus' equal buckra wid me howdye."