

JUDICIAL EDUCATION INSTITUTE
OF THE
EASTERN CARIBBEAN SUPREME COURT

WORKSHOP FOR BAILIFFS
OF ANGUILLA, MONTSERRAT, ST. KITTS AND NEVIS
AND THE VIRGIN ISLANDS

A HISTORICAL OVERVIEW OF
THE OFFICE OF BAILIFF

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*Terence V. Byron, C.M.G.,
Chambers,
Fort Street,
Basseterre,
St. Kitts.*

The first sitting of the Court of Appeal of the West Indies Associated States Supreme Court was held in Grenada on Monday the 24th day of April, 1967. Presiding over that sitting was first Chief Justice, St. Lucia-born the Honourable Mr. Justice (later Sir) Allen Montgomery Lewis.

He said in part, and I quote : "We are at the cross roads in our history and it is my belief that we have amongst us men of talent, men of ability, men of character, men of integrity, who are fully capable of governing the affairs of these States, and in these affairs, and not by any means the least important, is the administration of justice. Without the preservation of the law and its proper administration any system of Government must fall to the ground."

The new Chief Justice continued : "This is a new Court and I have come here because I believe that it is possible to build up in these islands a Court which can take its place in the front rank of Caribbean Courts and indeed of Commonwealth Courts."

Our first Chief Justice emphasised : "We shall expect the assistance of all Law Officers . . ."

In closing the Honourable Chief Justice said : "We trust that when in due course the time comes for us to leave here and to be replaced by other persons, the Court will by then have built up a reputation of which these States will be proud." (unquote).

How far the Court has developed, and will continue to maintain, a reputation of which we can all be proud, has depended, and will continue to depend, in no small part, upon the work of the Bailiffs of the Court.

Let me return to the seminal words of our revered first Chief Justice, whose tour of duty was exemplary. No doubt many of you may be reflecting on today's political incorrectness of the learned Chief Justice's blatant sexism in his reference to the "men of talent, men of ability, men of character, men of integrity" whom we had amongst us.

Permit me to enter a plea in mitigation on behalf of the learned Chief Justice. He did speak of leaving to be replaced by other PERSONS! How

The modern usage of the term bailiff is reserved overwhelmingly, but not exclusively, for the execution of writs and processes. This is so in England and Wales, in Canada, in Belgium, and in the United States, for example.

In England and Wales, there are water bailiffs to police bodies of water and to prevent illegal fishing.

In the Isle of Man, the High Bailiff is the head stipendiary Magistrate.

In the Channel Islands, the Bailiff is the first civil officer in each of the bailiwicks of Jersey and Guernsey, serving as president of the legislature and the Royal Court. Each bailiwick has possessed its own bailiff since the islands were divided into two jurisdictions in the 13th Century.

The word 'bailiff' is said to come from the Latin ballivus. For our purposes, I am content to rely on the definition in Mozley & Whiteley's Law Dictionary : "A subordinate officer, appointed to execute writs and

processes, and do other ministerial acts. Thus, there are bound bailiffs, also called bum bailiffs (said to be an allusion to the mode of catching an offender) who are employed in England by the sheriffs, and bound to him, with sureties, annually, for the due execution of their office.

Then, there are special bailiffs, bailiffs of manors, hundreds, liberties, and bailiffs of county and inferior courts.

Prior to 1873, the Supreme Court in the islands of St. Kitts, Nevis, Anguilla, Montserrat and the Virgin Islands, represented here today, had cognizance of all pleas and proceedings, civil or criminal, and all jurisdictions, powers, and authority whatsoever as fully and amply to all intents and purposes as the following courts and judges in England :

- (1) Her Majesty's Court of Queen's Bench, Common Pleas and Exchequer of Pleas, or either of them.

- (2) Her Majesty's High Court of Chancery ; the Lord High Chancellor of Great Britain and the Vice-Chancellors or either of them.

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- (3) The Courts and Justices of Oyer and Terminer and general gaol delivery, Assize, and Nisi Prius, or either of them.

 - (4) Her Majesty's Court of Probate and Court for Divorce and Matrimonial Causes.

 - (5) The Court of Bankruptcy in London.

That all changed with the creation of the Supreme Court of the Leeward Islands on 16th October 1873, and with the abolition of all pre-existing superior Courts, through Act No. 23 of 1873 of the Leeward Islands.

Actually, Act No. 22 of 1873 of the Leeward Islands, which was passed by the General Legislative Council in St. Kitts on 22nd February, 1873, and which created the Supreme Court of the Leeward Islands and abolished all pre-existing Courts, was passed before the Supreme Court of Judicature Act of 1873 in the United Kingdom was passed on 31st March 1873.

But Act No. 22 did not receive the Royal Assent and Act No. 23 of 1873 in section 49, provided that it shall not come into operation until it shall have been confirmed by Her Majesty and such confirmation shall have been duly published. There is a notation that Act No. 23 of 1873 was in due course duly passed by the General Legislative Council at Antigua and duly published at Antigua in October 1873.

The Supreme Court Act No. 23 of 1873 of the Colony of the Leeward Islands does not mention the term Bailiff in any of its 49 sections.

The Act set up Circuit Courts to be held in each of the six (6) Presidencies as follows, four times per year in each of the Presidencies of Antigua, St. Christopher, Dominica and Nevis, three times per year in the Presidency of Montserrat and once in every year in the Presidency of the Virgin Islands as well as once every year in Anguilla, and at such other times as the Governor by proclamation shall otherwise direct in respect of the last two mentioned places.

The Registrar or Secretary of the Courts of each Presidency was to be Registrar of the Supreme Court and of the Circuit Court within such

Presidency.

The Provost Marshall of each Presidency was to be Provost Marshal of the Supreme Court and of the Circuit Court of such Presidency.

The duties of the Registrar and Provost Marshal were to be such as had theretofore been performed by those officers in the several presidencies of the colony, and they were, further, to perform all such other duties as the Court from time to time might prescribe.

It is important to note the provisions about the Provost Marshal. Act No. 11 of 1873 of the Leeward Islands, the Civil Procedure Act, 1873, was passed on 24th February, 1873, and was evidently to go hand in hand with Act No. 22 of 1873 aforesaid.

Act No. 11 of 1873, like Act No. 22 of 1873, was also passed by the General Legislative Council at St. Christopher, and does not bear any indication of having received the Royal Assent. It was later replaced with reservations by Act No. 8 of 1876.

But Part XIX on Execution in Act No. 11 of 1873 gave copious authority to the Marshal or his deputy to execute warrants or decrees or orders, to seize goods and chattels of the Defendant, to accept double-value security for levied goods to be released, to sell levied property, to pay proceeds of sale into Court, to further levy on goods in the event of the insufficiency of the first levy, to advertise the sale of property taken in execution, to deliver a Bill of Sale for property taken in execution, to receive cash from a judgment debtor compelled by the Court to pay over monies in his hands to the Marshal.

Again, there is no mention of the Bailiff by name, though it is possible that the Marshal's deputy could be a Bailiff.

It is when we come to the legislation establishing the Court of Summary Jurisdiction in 1874 by Act No. 9 of 1874 of the Leeward Islands that we see perhaps the earliest statutory reference to the Bailiff locally.

This was an Act to establish in the colony of the Leeward Islands a Court for the summary trial and decision of small cases of up to twenty pounds.

The Summary Jurisdiction Act 1874 provided for the Bailiff to levy execution both in the Presidency where the order or decree was handed down or in any other Presidency.

The Bailiff was constrained to execute his writ after sunrise and before sunset. He could seize, take and levy upon the goods and chattels of the Defendant except his wearing apparel and bedding, and that of his family, and the tools and implements of his trade to the value of five pounds, and he could also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or guarantees for money, belonging to the Defendant, and hold the same as security for the amount directed to be levied by such execution.

If the Bailiff could not find, and if the Defendant failed to point out, any or any sufficient goods or chattels whereon to levy, or any sufficient interest in lands, tenements and hereditaments within the Presidency, against which to enforce the decree, the Plaintiff could apply to the Court for a writ to issue for the personal arrest and imprisonment of the Defendant.

A Judgment Creditor could get a garnishee order for the Judgment Debtor to show cause why money in the hands of a third party belonging to the Judgment Debtor should not be paid over to the Bailiff.

Service of all writs, orders and other documents in the Court of Summary Jurisdiction was to be effected by the Bailiff, or other proper officer in any presidency or place within the jurisdiction of the Supreme Court, by delivering a copy of the document to be served to the Defendant or other person to be served, or to his attorney on record.

The Summary Court was to be held in the Court House at St. John's, Antigua; Basseterre, St. Kitts; Roseau, Dominica; Tortola, Virgin Islands; and Anguilla, on the first day of each month. Then, at the Court House, Charlestown, Nevis, on the 15th day of the months of February, April, June, August, October and December, while at Montserrat on the 15th day of the months of February, May, August and November, and on the next day, if any of the dates fell on a Sunday or public holiday.

The Court of Summary Jurisdiction Act 1874 provided a Schedule of Fees of Bailiff. For service of any writ, summons, notice or other

document, one shilling. (If service was required at a greater distance than one mile from the Court House an extra fee not exceeding six pence a mile was payable for every mile or part of a mile beyond the first).

Then, for every personal arrest, two shillings and six pence. For conveying a person arrested from place of arrest for every mile or part of a mile, one shilling. For discharging a person arrested at the desire of Plaintiff, one shilling. For every seizure or attachment of property under process of the Court, one shilling. Taking bail or security, one shilling. For releasing property seized or attached at desire of Plaintiff, one shilling. For each man in possession, including his Board per diem, two shillings. For the sale including advertisements, catalogues and commission on delivery of goods, one shilling in the pound on the net proceeds of sale.

I have gone into the provisions of The Summary Jurisdiction Act, 1874 in such detail because in section 2, the Interpretation section, it is provided that the term "Bailiff" shall mean the Provost Marshal of any Presidency or island, or the Officer appointed by him to execute the process of the Court.

I find this fascinating for two reasons. It explains for me the origin of the expression still commonly used today of the "Marshal Bailie", the officer appointed by the Provost Marshal to execute the process of the Court.

The other reason for fascination is that the Provost Marshal does not appear to have ever been in England an officer of the Court.

The only reference in Halsbury's Laws of England to a Provost Marshal is in the Volume on Royal Forces, under the section on Discipline, where there is a reference to the offence of insubordination for wilfully obstructing or refusing to assist a naval provost marshal, found in the Army Act, 1955, the Air Force Act, 1955 and the Naval Discipline Act, 1957.

Mozley & Whiteley's Law Dictionary defines Provost Marshal as

- (1) An officer in the Queen's Navy having charge of prisoners at sea.
- (2) A military or air force officer in control of military or air force police

and having charge of prisoners.

- (3) An officer appointed in time of martial law to arrest and punish offenders. Execution parties are placed under his orders.

I have found a piece about the Royal Military Police whose Commanding Officer is the Provost Marshal (Army). The reference states : "The office of Provost Marshal is historically very ancient, dating from 1511 when King Henry VIII appointed Sir Henry Guyldford as his Provost Marshal. In 1629 King Charles I in his Articles of War issued a declaration that "the Provost shall have a horse and soldiers to attend him." This historic document, they say, is known today as the RMP Emblazonment. "Her Majesty Queen Elizabeth II is the Colonel-in-Chief of the Corps of the Royal Military Police. The appointment of Provost Marshal is the prerogative of the Monarch and remains so to this day."

So, too, in the United States, the Provost Marshal is a military officer of high rank with disciplinary powers.

One can only guess that in these islands the Provost Marshal had

as his substantive duty the defence of the Colony and when that duty became redundant he was absorbed into the Court, to perform a substantive role in service and enforcement of Court process, then gradually a more ceremonial position.

Today, in the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act, 1975, the Registrar for each Circuit (and there are now only two Circuit, and not six as originally) shall be ex officio Admiralty Marshal and Provost Marshal of that Circuit.

The Bailiff is described as an officer of the Court under the control of the Registrar, presumably in the Registrar's capacity as Provost Marshal.

The 1975 Act provides that every Bailiff shall, in addition to his duties as Bailiff, also perform, if required, the duties of Crier of the High Court and of the Court of Appeal.

It is an offence under the 1975 Act to disturb, hinder or assault any Bailiff in the execution of his duty, punishable by fine not exceeding five

hundred dollars.

It is unlawful for a Bailiff to act as attorney, agent or advisor of any plaintiff, defendant or other suitor, or party in or to any proceeding in any Court in the State, or give advice in any land matter or act as conveyancer, or notary public, or accept any gratuity for the performance of any duty in connection with his office.

Any officer of the Court, including Bailiffs, can be investigated in a summary way by a Judge of the High Court, if charged with extortion, or with not duly paying any money received by him in the execution of his duty, or with any fraud, wrongful act, or neglect in the discharge of the duties of his office. The Judge, without prejudice to any criminal proceedings, or to any right of civil action against the officer, or the power of the Governor General to suspend or dismiss the officer, can dismiss the charge, or order the officer to pay any monies or damages which in the opinion of the Judge the officer ought to pay, and can also impose such fine, if any, as he may think fit, on the officer.

The Judge can order the officer to pay the costs of the inquiry at

such rate as he may think fit in his discretion. Any of these orders can be enforced as an order of the High Court.

The Magistrate's Code of Procedure Act, Cap. 46 of the Laws of St. Kitts and Nevis (Revised Edition 1961) was passed on the 10th day of February, 1892 and has been amended more than 40 times.

The Magistrate's Court is a Court of summary civil and criminal jurisdiction which operated side by side with the Court of Summary Jurisdiction. The difference between the two Courts was that the Court of Summary Jurisdiction was presided over by a Judge, and had a larger range of matters it could try. It was abolished in 1975 and its jurisdiction was absorbed into the Magistrate's jurisdiction.

The Magistrate's Code of Procedure Act provided for the appointment of Bailiffs without spelling out his duties or remuneration and provided for the Bailiff to give security for the due performance of the duties of the office according as the Administrator might direct.

Bailiffs are required by that Act to pay over all fees received by him

forthwith to the Magistrate or Clerk to be paid into the Treasury. The same thing applied to proceeds of judgment debt collection.

There is a Schedule of Bailiff's Fees, but it has long ago fallen into disuse as being outdated.

The office of Bailiff in the High Court and in the Magistrate's Court is overdue for complete overhaul.

I have read with interest the review of the work of the Bailiffs of Grenada produced in 2004. I endorse the recommendations contained therein and I sincerely hope and trust that this Workshop will come up with real solutions to the problems of overwork, lack of training, lack of proper incentives, lack of reporting activities and lack of real accountability which plague the proper discharge of the Office of Bailiff today.

