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Résumé de l'article

Le Code civil de Sainte-Lucie est une copie presque mot à mot du Code civil du Québec, malgré quelques influences mineures du Code civil de la Louisiane. Il fut promulgué dans l'île en 1879.

Source constante d'émerveillement aussi bien pour les citoyens des Antilles que pour les visiteurs a été le fait que, de tous les anciens territoires britanniques des Caraïbes soumis aux vicissitudes des luttes armées des pouvoirs métropolitains dans la région, luttes qui aboutirent à de fréquents changements de souveraineté, seulement Sainte-Lucie, après soixante-seize ans de gouvernement britannique ininterrompu, depuis la dernière cession de l'île par la France, a réussi à introduire un Code civil. Ce Code était, en effet, en conflit direct dans la plupart des cas, avec le droit reçu de la mère patrie.

Ce texte tâche d'examiner les forces mises en oeuvre pour atteindre ce but et la détermination de leurs efforts.

THE HISTORY AND DEVELOPMENT OF THE SAINT LUCIA CIVIL CODE*

by N.J.O. LIVERPOOL**

ABSTRACT

The Civil Code of St. Lucia was copied almost verbatim from the Québec Civil Code and promulgated in the island in 1879, with minor influences from the Civil Code of Louisiana.

It has constantly marvelled both West Indians and visitors to the region alike, that of all the former British Caribbean territories which were subjected to the vicissitudes of the armed struggles in the region between the Metropolitan powers resulting in frequent changes is sovereignty from one power to the other, only St. Lucia, after seventy-six years of uninterrupted British rule since its last cession by the French, managed to introduce a Civil Code which in

RÉSUMÉ

Le Code civil de Sainte-Lucie est une copie presque mot à mot du Code civil du Québec, malgré quelques influences mineures du Code civil de la Louisiane. Il fut promulgué dans l'île en 1879.

Source constante d'émerveillement aussi bien pour les citoyens des Antilles que pour les visiteurs a été le fait que, de tous les anciens territoires britanniques des Caraïbes soumis aux vicissitudes des luttes armées des pouvoirs métropolitains dans la région, luttes qui aboutirent à de fréquents changements de souveraineté, seulement Sainte-Lucie, après soixante-seize ans de gouvernement britannique ininterrompu, depuis la dernière cession de l'île par

 This paper is part of a piece of research of much wider scope which was undertaken in 1967-68 as a result of a one-year fellowship granted by the Institute of Comparative and Foreign Law of McGill University. Canada Council provided funds for travel.

Special thanks are due to Professor P.A. Crépeau of McGill University for his valuable comments, and also to the then Registrar of St. Lucia, Mr. Salfarlie.

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effect was in direct conflict in most respects with the laws obtaining in its parent country.

This is an attempt to examine the forces which were constantly at work in order to achieve this end, and the resoluteness of their efforts.

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Ce texte tâche d'examiner les forces mises en œuvre pour atteindre ce but et la détermination de leurs efforts.

CONTENTS

INTRODUCTION

This article traces the history and development of the Civil Code of St. Lucia, listing all the early attempts made at codification and the reasons for their failure.

The following works have been referred to in the text:—

BLACKSTONE	—	*Blackstone's Commentaries on the Law of England*
BREEN	—	*St. Lucia: Historical, Statistical and Descriptive* by H.H. BREEN (1844).
BURNS	—	*History of the British West Indies*, by Sir Alan Cuthbert BURNS, 2nd Ed. (Revised) 1965.
CAMERON	—	Article by T.W.M. CAMERON: "The Early History of the Caribee Islands (1493-1530) contributed to the *Scottish Geographical Magazine*, Vol. 50, 7 January 1934, and subsequently published in booklet form.
C.O.	—	Colonial Office Records.

Part one deals with the history of the Island from earliest times until it was finally ceded to Great Britain in 1803; and includes a description of the various proclamations which were issued to confirm the intention of the conquerors to retain the existing system of law. Part two evaluates the English theory of the doctrine of reception of law as it applies to colonies acquired by settlement on the one hand and those acquired by conquest or cession on the other. Part three traces the legal developments in the Island from 1814 when the Treaty of Cession was finally signed to 1842 when English was introduced as the language of the Courts. Part four lists the various attempts at codification and ends with promulgation of the Code.

PART ONE

THE DISCOVERY AND CONQUEST OF ST. LUCIA

The written history of the Caribbean islands begins with the second voyage of Christopher Columbus in 1493. Before that date the islands had been in the possession of the Arawaks and Caribs from South America. The original inhabitants were the peace-loving Arawaks who, centuries earlier, had migrated northwards from the Spanish Mainland. At the time of the discovery of the islands, however, they were being actively replaced by the more war-like Caribs who had followed in a subsequent wave of migration from the same continent.[1]

Cameron states that Grenada, St. Vincent, St. Lucia, and Martinique were first discovered by Hojeda but that none of the names he gave to these islands have survived.[2] Hojeda, it is stated, sailed from a Spanish port in the summer of 1499 and returned early in April 1500. This expedition reached

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CLARKE	—	*A summary of Colonial Law* by Charles CLARKE (1834).
DES VŒUX	—	*My Colonial Service,* Memoirs of Sir George William DES VŒUX (1903).
EDWARDS	—	*History of the West Indies* by Bryan EDWARDS in four volumes. (1793).
HALSBURY	—	*The Laws of England* by the Earl of HALSBURY. 1st Edition (1909).
PARRY and SHERLOCK	—	*A short history of the West Indies* by J.H. PARRY and P.M. SHERLOCK (1956 Ed.).
TARRING	—	*Chapters on the Law Relating to the Colonies* by Sir C.J. TARRING 4th Ed. (1913).
WISEMAN	—	*A short history of the British West Indies* by H.V. WISEMAN (1950).

[1] CAMERON, p. 6.

[2] On a map reconstructing Hojeda's voyage, CAMERON mentions "The Falcon" as the name originally given to St. Lucia.

Hispaniola (now Haiti) on 5 September, 1499 after coasting along the Spanish Mainland. He had accompanied Columbus on the latter's second voyage.[3] Cameron also mentions that Las Casas, one of the oldest authorities on the history of the area,[4] assumed — as is probably the case — that the voyage in question is identical with the first voyage of Amerigo Vespucci, who is known to have accompanied Hojeda.[5]

The name St. Lucia is apparently derived from the saint's day on which the island was discovered. The island, which is some forty miles long with a maximum width of fifteen miles has Martinique on its north, St. Vincent on its south, and Barbados on its southeast coast. The first-known attempt of a settlement seems to have been made in August 1605, when currents made it impossible for the English ship the "Olive Branch" to land a party of sixty-seven immigrants intended for Charles Leigh's colony on the Wiapaco, on the Guiana coast. On the way back to England the men were landed in St. Lucia where they were killed by the Caribs.[6] Another attempt to form a settlement on the island was made in 1638[7] when the English took possession; but an attempt in 1641 to carry off some Caribs who had visited one of the English ships in port at the time so outraged the Caribs that the Governor and most of the settlers were murdered by the Caribs, and the surviving English settlers were driven out.[8]

Following an Edict of the King of France of 1642, ceding St. Lucia to the French West India Company, and its subsequent sale to private individuals in 1650, the island was inhabited by the French until 1664 when it was attacked and taken by the English 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. A compromise was effected by declaring it a neutral territory, and this was confirmed by the Treaty of Aix-La-Chapelle. In January 1762, Rodney took the island after the capture of Martinique, but in the final peace

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[3] BURNS, (p. 87) is of the opinion that Columbus may have sighted St. Lucia on his third voyage.

[4] He had also accompanied Columbus and later wrote *Historial de las Indias,* (1875).

[5] *Per contra* see BURNS, pp. 87-90.

The St. Lucia handbook, directory and almanack first printed in 1901 gives June 15, 1502 as the date on which Christopher Columbus discovered St. Lucia (St. Alousie or St. Alouzie) during his fourth voyage; but discovery day is celebrated on St. Lucy's day, 13th December.

[6] PARRY and SHERLOCK, p. 48.

[7] This date is given by PARRY and SHERLOCK. WISEMAN gives 1635, EDWARDS, 1639, and BURNS and BREEN give 1640. This is usual in the acount of early Caribbean history.

[8] BREEN, p. 46.

terms[9] which followed, France was allowed to retain St. Lucia on the grounds that it was essential to the defence of Martinique.[10]

A free port was opened by the French in St. Lucia in 1767, but when, in 1778, she joined in the fighting to assist the revolution in North America and to capture British possessions in the Caribbean, the British fleet under Byron took the island in December of that year. The Treaty of Versailles, 1783, however, saw St. Lucia back into French hands. The British captured St. Lucia again in 1794, and it was quickly recaptured by the French; but Abercromby's expedition in 1795 recovered it for the British. All conquests were returned by the Peace of Amiens, 1802, but on the renewal of hostilities in 1803, the British re-occupied St. Lucia on 19th June of that year; and, although the final act of cession was not effected until the Treaty of Paris in 1814, the island has thenceforth always remained a British possession. It would appear, however, that from 1794 onwards, the British commanders were so determined to retain possession of the territory that a series of proclamations (often conflicting with each other) were issued in the heat of battle and the main legal events which occurred in the last years of St. Lucia as a French territory appear to have been as follows.

The island was captured from the French Republicans by British Forces under General Sir Charles Grey and Admiral Sir John James on 4 April, 1794, who on the following day issued a «Proclamation de son Excellence le Commandant en Chef, pour le rétablissement des Tribunaux dans l'île de St. Lucie» which declared that «attendu que cette Colonie et son gouvernement étaient faits dans les cours des affaires civiles, et qu'il pourrait être convenable de rétablir les mêmes formes et usages; nous faisons savoir en autre que lorsque les cours et Tribunaux seront légalement rétablis dans l'île de Martinique, ceux de cette île continueront d'en être dépendants [...]»[11] The British Garrison was withdrawn from St. Lucia in June, 1795, but on 26 May of the following year the island was surrendered to General Abercrombie, when another attempt was made to change the formation of its Court of Law. Such a change was then deemed necessary to be adapted to the wants and circumstances of the Colony, but that new scheme was no sooner put in operation than it was found to be unworkable. General Abercrombie therefore issued a proclamation to re-establish the Courts of Justice under and comformably to the laws and usages of the French Monarchy.[12] St. Lucia

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[9] The Peace of Paris, 1763.

[10] A very good reason, one would have thought, for the English to have retained it.

[11] See *David Graham & Co. Ltd. of Bridgetown, Barbados* v. *William Frank,* (1912) St. Lucia Gazette p. 400.

[12] In other words, the law as it prevailed in St. Lucia before 1789. See also Breen p. 322.

continued to be a dependency of Martinique and the two islands remained British possessions until they were ceded to France by the Treaty of Amiens on 25 March 1802.

On 21st June 1803, the island was captured again, this time by General Greenfield and Samuel Hood who, by a Proclamation issued two days later, assured and guaranteed to the inhabitants the full and entire enjoyment of their property, under the laws which existed in the Colony immediately prior to the last cession, thus discounting the short intervening period of French rule,[13] and this remained the position until the conquest was ratified by the Treaty of Paris on 30 May, 1814, under the express condition that the French Civil Laws should continue to be the law of the Island.[14]

Lest there should enter into the minds of the conquerors an inclination to change the laws of the territory, on the 22 August, 1814, ten days after the Treaty was promulgated in the island, the *Conseil Souverain* (or Court of Appeal) addressed the Prince Regent in the following terms:

"The colony of St. Lucia has been governed to this day by the Coutume de Paris and by the laws and regulations in force for so long, and for at least twenty years since the territory has been occupied, that it would invite nothing but trouble in the colony, and confusion in all transactions to change them now. Their preservation would be as just as it would be beneficial."

And finally, on 3 January 1817, an Ordinance was issued by "Richard Augustus Seymour, Major-General, Governor, Commander-in-Chief, Vice-Admiral of the Island of St. Lucia", the first article of which reads: «Les lois, coutumes et règlements en vigueur dans la Colonie au moment de la publication de la présente ordonnance, continueront à être suivis et exécutés [...]»[15]

PART TWO

THE ENGLISH THEORY OF THE DOCTRINE OF RECEPTION OF LAW AND ITS APPLICATION TO ST. LUCIA

According to the English theory of the doctrine of reception of law, the extent to which the law of the parent state applies to a particular colony or possession depends primarily upon the manner of its acquisition. Thus there is a great difference between the case of a possession acquired by conquest

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[13] See DES VŒUX, p. 282.

[14] See *Du Boulay* v. *Du Boulay*, [1869] L.R. 2 A.C. 430 at 437/8.

[15] This last Ordonnance has obviously been ignored because it is generally considered that the laws in force in St. Lucia in 1789 continued to be in force thereafter.

or cession, and that of a possession which originated by the settlement of British subjects.[16].

SETTLED OR OCCUPIED TERRITORIES

In the case of settled or occupied territories the rule has been stated thus: "[...] if there be a new and uninhabited country found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new found country is to be governed by the laws of English; though, after such country is inhabited by the English, acts of Parliament made in England, without naming the foreign plantations, will not bind them."[17] Blackstone reminds us, however, that this statement "must be understood with very many and very great restrictions" because "Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony".[18]

What law is to be admitted, at what times, and under what circumstances or restrictions must, in case of dispute be decided in the first instance by the judicature of that colony, subject to the revision and control of the Judicial Committee of the Privy Council. Quite obviously all the laws of the parent state could not be generally applied in its colonies as the highest incongruities might follow. This struck the acute mind of Lord Mansfield very forcibly when he declared: "It is absurd that in the colonies they should carry all the laws of England with them; they carry only such as are applicable to their situation."[19]

CONQUERED AND CEDED TERRITORIES

Where the territory has been acquired by conquest or cession different considerations arise. "For there the conqueror, by saving the lives of the people conquered, gains a right and property in such people; in consequence of which he may impose upon them what law he pleases. But, until such laws are given by the conquering prince, the laws and customs of the conquered country shall hold place; unless where these are contrary to our reli-

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[16] Halsbury, Vol. 10, p. 565 *Cooper* v. *Stuart,* (1889) 14 App. Cas. 286 at 291. This statement refers only to the law applicable at the time of occupation or conquest. Different considerations apply to the applicability of laws passed subsequently. See Generally *Reception of Law in the West Indies* by K.W. PATCHETT (University of the West Indies publication).

[17] 2 P. Wms. 75.

[18] Vol. 1, p. 107. This statement is particularly true in so far as statutes of general application are concerned.

[19] *Campbell* v. *Hall,* (1774) Lofft 655 at 711.

gion, or enact anything that is *malum in se,*[20] or are silent; for in all such cases the laws of the conquering country shall prevail.''[21]

The distinction between colonies acquired by occupation or settlement on the one hand, and those acquired by conquest or cession on the other, seems to amount in practice to a distinction between countries in which there are not, and countries in which there are, at the time of their acquisition, any existing civil institutions and laws. In the first of these cases it is a matter of necessity that the settlers should use their native laws because they have no others to resort to, whereas in the other case there is an established *lex loci* which it might be highly inconvenient to abrogate suddenly especially as in the former case there may not be, but in the latter case there may be, new subjects to be governed who are probably not only ignorant of the laws of the conqueror but also unprepared in civil and political character to receive them.[22]

In *Rudding* v. *Smith,*[23] Lord Stowell, whilst considering the application of the doctrine of reception of law as it applies to conquered or ceded territories, pointed out that even with respect to the ancient inhabitants a large portion of the ancient law is unavoidably superseded by the revolution of government that has taken place, and he continued, ''though the old laws are to remain, it is surely a sufficient application of such terms 'that they shall remain in force', if they continue to govern (so far as they do continue) the transactions of the ancient settlers with each other, and with the new comers. To allow that they shall intrude into all the separate transactions of these British conquerors is to give them validity, which they would otherwise want, in all cases whatever.''[24]

Tarring[25] expresses the view that the doctrine as laid down by Lord Stowell appears to be too broadly stated, and suggests that the word 'remain' should be understood not only as referring to the old inhabitants but also to the country in which the laws have had effect, since a territorial rather than a personal application of such laws would be less open to objection as curtailing the sovereignty of the new state.

Laws Passed in Parent State After Conquest or Settlement

The rules stated above apply to the application of the laws of the parent state at the time of the settlement or conquest; so that once the colony has been conquered or ceded and legislative powers have been granted to it, the

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[20] See *R.* v. *Picton,* (1810) 30 Howell's State Trials 225.
[21] 2 P. Wms. 75 at p. 76.
[22] *Freeman* v. *Fairlie,* 1 Moo. Ind. App. 305 at 324.
[23] 2 Hag. Con. 382.
[24] *Ibid.* at p. 383.
[25] At p. 14.

sovereign can no longer exercise its power in reference to local matters. This was decided in *Campbell* v. *Hall*[26] where an action was brought to recover a sum of money which had been imposed by George III as a duty of 4½ per cent on certain exports from the island of Grenada. The court gave judgment for the plaintiff on the ground that, previously to issuing the Letters Patent imposing the duty, the King had empowered the Governor to summon a legislative assembly for the island, and had thereby precluded himself from afterwards exercising legislative authority by virtue of his prerogative.

Similarly, since English statute law is constantly being added to and altered by fresh enactments it has been decided that no Act of Parliament passed after a colony is settled ought to be construed as extending to it, without express words showing the intention of the legislature to be that it should.[27] On the other hand, every colony, whether acquired by occupancy, by conquest, or by cession, is subject, at all periods of its existence, to the sovereignty of the British Parliament, by whose power, superior to that of the King in Council (where both apply), its existing laws may, in all cases, be either wholly or in part repealed; and new laws or a new constitution, be imposed at pleasure.[28] Such acts of the British Parliament are in force in the territory or territories concerned either on the date on which they receive the Royal Assent or on such other date stipulated in the Act itself.

Other acts of the English Parliament may be adopted by the colony by going through the formalities of enactment of the whole law or by incorporating it by reference in a law passed for that purpose. In the case of French Ordonnances, however, it would seem that such Acts of the parent State acquire the force of law in a particular colony by mere registration. This settled the issue in the case of *Du Boulay* v. *Du Boulay*.[29]

The plaintiffs were members of a family long resident in St. Lucia who, for many generations, had been called by the name of Du Boulay. The defendant was born in 1835, the illegitimate son of a woman who was formerly a slave of the Du Boulay family, and who had been manumitted in 1831 and then described only as Rose. But it appeared that shorly before the defendant's birth his mother had assumed the name of Du Boulay and used it until her death in 1854; that his brother was known as Du Boulay until his death in 1856; and that the defendant, himself, openly carried on business in St. Lucia under the name of Du Boulay from 1855 until the institution of the action, though he claimed no relationship to the Du Boulay family.

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[26] (1774) 20 St. Tr. 239.
[27] *R.* v. *Vaughan* (1769) 4 Burr. 2494.
[28] CLARKE p. 10.
[29] [1869] L.R. 2 AC 430.

The plaintiffs brought this action to restrain the defendant from using the name of Du Boulay, and the trial judge gave judgment in their favour. The defendant appealed to the Court of Appeal for the Windward Islands which, by a majority, (H.J. Woodcock Chief Justice of Tobago and J.F. Gresham, Chief Justice of Grenada) allowed the appeal. Woodcock C.J., who delivered the majority judgment observed:[30]

"It was stated from authority at the Bar, that there was a time when in France names were changed without any solemnity, but such a latitude was prohibited by an Ordonnance of the 11th April, 1803. Without any hesitation, I say that Ordonnance is not in force in St. Lucia. No Ordonnance in France was deemed to be in force in her colonies unless registered there, or extended to the colonies by the Order of the Parent State. The *Coutume de Paris* was the law of the French Colonies, but why? because the 33rd Article of the *arrêt* of the *Conseil d'État du Roi,* of May, 1664, establishing the West India Company, expressly declares its obligatory effect in the West Indian Colonies, as it had been established in the French Colonies in the East. The *Coutume de Paris* is still continued as the law of St. Lucia. It does not appear that the Ordonnance of the 11th of April, 1803, was extended by its terms, or by any other Edict of the French Government, to its Colonies, and it has not been registered in St. Lucia."[31]

The Ordonnance in question was passed in France merely two months before the island fell to the British in 1803, and when regard is paid to the unsettled condition of France at the time, and to the existence of war, both of which would have served to increase the irregularity of communication then existing between Europe and the Caribbean; to the length of time consumed in a voyage across the Atlantic in those days, and the slowness which usually attended all Government action, one is apt to presume with Wood-

[30] *Ibid.* at p. 434. Both judgments of the W.I.C.A. are printed in the report of the Privy Council's judgment.

[31] The judgment which was called "superficial and imperfect" in its exposition of the law of St. Lucia by ATHILL C.J..; and which, in the opinion of counsel for the appellants before the Privy Council, expressed too many strong "moral considerations", opened thus:— "The baneful influence of slavery in the West Indies, under which the possession of the Slave rendered the unfortunate bondswoman the mere creature of her Master's lust, produced a race degraded by the Mother's shame and the Father's crime; although this class for many years were refused an entrance within the circle of refined society, and although the law denied to its members, as being illegitimate, an inheritance, the present suit is the only attempt I have ever heard of to deprive them or their progeny of a name, and this after thirty years of emancipation, and after the Grandchildren and Great-grandchildren of the almost forgotten Slave, have, by education and integrity, won for themselves an equal place with their fellow men. Thank Heaven, I know of no law which I can be called on to administer by which such an attempt can be supported."

cock C.J. that, in the absence of evidence to the contrary, the Edict was unheard of in the island at the time of its conquest in 1803.[32]

In his dissenting judgment, Athill C.J. of St. Lucia who had also been the trial judge, stated the immense difficulties which an English Judge had to overcome in St. Lucia in the application of French law, he then traced the history of the island and of its laws, and continued, "the Civil Law of the Island, besides the Local Ordonnances, the Maritime and Commercial Law, are nearly the whole of the French Laws anterior to 1789, which are scattered over a great number of authorities, such as the *Coutume de Paris,* which is a part of the ancient *lex non scripta* of France, the Ordonnances, Edicts, and declarations of the French Monarchy, the *Code de la Martinique*[33], Pothier, Merlin, Ferrière, Denisart, Domat, Pigeau, Jousse, and many others too numerous to mention.", and after mentioning that formerly in France the unrestrained changing of names was attended by great confusion, he concluded ".... on the 11th of April, 1803, a law was made to check that dangerous system, and it is not amiss to observe that that law is not only still in force in this Colony, but has been retained.... (in) France, and now forms part of the existing laws of that country:". The learned judge, however, failed entirely to mention on what authority he considered the Ordonnance to be in force in St. Lucia.

On appeal to the Privy Council it was held that the Ordonnance of 1803 was never in force in St. Lucia and furthermore there was no proof that the existing law of the Island entitled the Appellants to maintain their action, whether they relied upon the old French law independently of the Ordonnances, or upon proof that the Ordonnances ever formed part of the Law of St. Lucia; or even if they did, that they gave a family a right to proceed by civil action against a person calling himself by the family name without authority, and to prevent him from continuing to use it.

The influence of English law — which allows an almost unrestricted right to a change of name — backed as it seemed by strong French judicial authority, was by then too strong to be checked.

PART THREE
PREPARING THE GROUND FOR CODIFICATION 1814 - 1842

As was to be expected the existence of so many sources of the laws by which St. Lucia was to be governed irritated the conquerors, most of whom could not even understand the language in which those laws had been written

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[32] See also Lord CHELMSFORD's remarks on this point in *Du Boulay* v. *Du Boulay,* at pp. 445-6.

[33] This was a work of five volumes which contained the local laws of St. Lucia down to 1803.

and were being interpreted in the courts: and added to this was the fact that the French language formed the basis of all ordinary, social and commercial intercourse in a country which was undeniably British.

During the first few years of British rule the Judges and other officials of the Court were French while British sovereignty was exercised by a succession of military governors, thus relations between the two were far from cordial; and as the *Conseil Supérieur*[34] also exercised legislative powers which they often used to threaten over-zealous Governors,[35] a further task which had to be undertaken was the enforcement of the traditional doctrine of the separation of powers which appeared to prevail under the British Constitution. Through persuasion and (less often) even threats the stubbornness of the French inhabitants was finally overcome but not, as we shall see later, without considerable difficulty.

During this early period of British rule events in the territory centred around the disputes between the French Judiciary and the British Governors, and the resolute opposition by the French population to the introduction of the English language. The latter objection was maintained by the use of a very ingenious argument. The terms of capitulation had guaranteed to the inhabitants the continued use of their laws, and it was urged that since those laws were French, any attempt, therefore to introduce English as the official language was bound to result in an eventual change in the law, contrary to the provisions of the Treaty of Utrecht. So that when in 1818, Governor Sir John Keane ordered that the administration of the various Government departments be carried out in English, Procurator General Drouilhet objected on the ground that he could foresee in those directions an attempt to alter the law.[36]

The basis of the law in force in St. Lucia when the island finally capitulated to the British was, as we have seen, the ancient French law as it existed

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[34] Under the French system the Sénéchaussée exercised original civil and criminal by jurisdiction and was presided over the Sénéchal. An appeal lay to the Conseil Supérieur composed of twelve counsellors selected from amongst the influential merchants and planters, six of whom besides the President formed a quorum. The Chief Justice as President and the Attorney-General were always members. An Imperial Order-in-Council of 20th June 1831 abolished both courts and instituted the Royal Court presided over by a Chief Justice and two Puisne Judges for the trial of civil causes, and by these three Judges and three assessors for criminal trials. An appeal lay to the Privy Council.

[35] Many a Governor was threatened by attempting to reduce his salary by one-half.

[36] C.O. 253/12. Drouilhet, who was appointed Procurator General in November 1816 continued to carry on his official correspondence entirely in French, and was always the first signatory to any petition addressed to the Secretary of State complaining of violation of the terms of the articles of capitulation. His intransigence may have cost him his job. He was dismissed in March 1826 "because he could not understand English well enough to have a sound knowledge of English law."

in France, before the promulgation of the *Code Napoléon,* known as the *Coutume de Paris.*[37] For although each region of France formerly had its own peculiar laws and customs, it is generally understood that the French colonists took the Custom of Paris with them as the basis of their laws in the same manner as British colonists, no matter from what part of the United Kingdom they emigrated, took the English common law.

In addition to the *Coutume de Paris,* the Ordonnances, Edicts and Declarations of the Kings of France from time to time where considered to be in force in their West Indian colonies when they related to matters of a general nature. There were also other laws relating particularly to colonial matters which emanated from the French Sovereign through the Governor or Intendants of his Colonies, which were published in a work entitled *Le Code de la Martinique.* And in default of any special law or ordinance applicable to any point in question before the French colonial tribunals, they had recourse to Roman law and the works of French writers, Pothier being amongst those most frequently cited.[38]

Although it was generally known what laws were considered to be in force in St. Lucia, the fact was that such laws were unobtainable in the territory. Therefore when in 1819, the Secretary of State asked the Governor to send him copies of the laws in force, the reply[39] was that he was unable to comply with the request because he was informed by the Procurator General that they were all destroyed by fire in 1796,[40] and that the Courts had been almost entirely guided by commentaries on them.[41]

Not only were the laws unobtainable, but it would also seem that early attempts by the British to obtain them were not encouraged by the French law officers who saw in the absence of a written set of laws, a greater dependence by the British on the learning of those who professed to know what those laws were. Procurator General Drouilhet was approached by the Governor in 1819 and asked to consult with his fellow law officers, Mr. Fanfroide, the Sénéchal and Mr. Berte St. Auge, Procureur du Roi,[42] about the possibility of having the *Code de la Martinique* examined and the appropriate amendments made for application to the island. Drouilhet replied that he had mentioned this to both gentlemen, but they had replied that their time was fully taken up with their normal duties. Writing to the Secretary of State about this the Governor, Sir John Keane noted that "the Procurator General's

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37 *Gahan* v. *Lafitte,* (1842) 3 Moo. P.C.C. 382.
38 C.O. 318/79.
39 *David Graham & Co. Ltd.* v. *Frank,* (1921) St. Lucia. Gazette 50.
40 A very common fate of documents in St. Lucia.
41 C.O. 253/13.
42 C.O. 253/13.

letter giving me this information [shows] with what little satisfaction any attempt at simplifying the laws is received by the principal magistrate''.

One may not agree with the deliberate policy of non-cooperation practised by those officers, and indeed it is difficult to understand their reluctance in making the laws available in St. Lucia, even in the French language. But perhaps a certain amount of sympathy can be extended to them when it is realised that they were, themselves, recent appointees to their respective posts following a period of violent disagreement between the Governor and the Court of Appeal which ended in several dismissals from among the ranks of the Judiciary.

The matter arose with the arrival of Governor Major-General MacDouglas early in 1816. At that time letters of appointment of Governors and their instructions from the Crown were registered in the rolls of the Court of Appeal; and it was the practice to register only a summary of these documents, and in French. A bitter argument ensued and this was followed by lengthy correspondence with the Colonial Office, with the result that both documents were ordered to be registered at length in French, and to add insult to injury, the Governor also ordered that his Secretary's letter of appointment be so registered as well.

In his report to the Secretary of State after this incident the Governor lamented that ''no regulation which has not been enregistered by the Court can be considered in force in this Colony even though it may have preceeded from the Throne itself''; and he continued ''It is to be regretted that Brigadier General Provost's proclamation of 1 July 1800 not only promised a continuance of French laws in this Colony but of the customs and usages of the French Monarchy, terms so vague and indefinite that no British Officer administering the Government [....] could [....] prevent their being had recourse to by mischievous individuals to thwart the views of Her Majesty's Government.''

With his report the Governor submitted some proposals for change. Among other things he proposed to dismiss the judges of the Court of Appeal and to appoint new ones; the Court was to be restricted to judicial functions and its proceedings were to be conducted in English even though its decisions would be founded on the French law in force prior to the revolution. His fifth proposal submitted in view of his recent argument with the Court of Appeal read: ''that it be specifically declared that the duties availing to the Court of Appeal are purely judicial and that it is competent to assist the Governor in legislative and other duties which he may think fit to confide to it always presiding himself and it should be clearly understood that they may not prevent the Governor from enregistering on the rolls of the Court any document he thinks fit.''

Major-General MacDouglas left St. Lucia soon after submitting his proposals for change. His successor Sir R.A. Seymour who arrived in November 1916, found every public office on the island in confusion on account of the arguments with his predecessor, and was unable to carry on. He appointed a new Council, some members then resigned and he replaced them.[43] His ability to overcome the stubbornness of the old guard seems to have been immense for he was able to write to the Secretary of State in the following year that the administration was running well since the removal of two troublemakers in DeBexon and McCall from the judiciary and the stripping of all powers, except judicial, of the Court of Appeal.[44]

The search for a non-St. Lucian to be Chief Justice of the island culminated in February 1825 with the arrival of Mr. Jeremie, a practitioner from the Channel Islands. But relations between himself and the Governor were no better than those between their predecessors in office; and it became necessary for the Secretary of State to remind the Chief Justice in September of the same year that he had no power to initiate, draft or introduce any legislation except rules of Court.[45]

Within six months of his arrival the enthusiastic Judge had submitted changes which he thought might profitably be made in order to improve the administration of justice in the island. His proposals were:

(1) to amend the *arrêts de règlement* passed by the Royal Courts of France in order to adopt them to St. Lucian conditions;
(2) to increase the number of judges so that it would be easier to obtain an unbiassed decision.[46]
(3) more frequent meetings of the Court of Appeal, and
(4) the recruitment of more judges from Martinique.[47]

The proposals were all rejected by Governor Blackwell, and although an attempt in the following year to list the main points of difference between English and French Commercial law was submitted to the Colonial Secretary,[48] Sir James Stephen who was asked to comment gave it as his opinion that the comparison was "mere speculation".[49]

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[43] C.O. 253/10.
[44] C.O. 253/11.
[45] C.O. 243/20.
[46] Integrity, zeal and a good judgment were all that were required of these gentlemen who were often chosen amongst the most influential planters. Before a Court of Appeal was set up by Sir George Prevost in 1800 for St. Lucia, all appeals went to the neighbouring French island of Martinique with which it shared a common administration.
[47] C.O. 253/19.
[48] C.O. 253/23.
[49] C.O. 253/24.

About this time the move towards the introduction of English law received an added impetus. First an ordinance of August, 1826 limited public offices and commissions in the law and medicine to British subjects exclusively in the future; and following this, the age of majority was reduced from 25 to 21 by an Order-in-Council of 15 January 1829.

On 10 October 1822, two Commissioners were appointed by the Secretary of State to enquire into the administration of Criminal Justice in Barbados and in the Windward and Leeward Islands excluding St. Lucia. Whilst they were in the area they were ordered to report on St. Lucia also, by which time their terms of reference had been enlarged to include Civil justice. The Commissionners visited the island in the same year and presented their report in 1830.[49a]

In their report the Commissioners commented on the paucity of the English law provisions which prevailed in the territory. They had expected to find at least that statutes of general application[50] were being applied; but were told much to their surprise that the inhabitants considered themselves bound to notice only those Acts of the British Parliament which had been registered in the Colony. Those which had so far been registered were the Slave Trade Act,[51] the American and West Indian Trade Act,[52] the Factors Act,[53] and the Customs Act,[54] the last three operating under the authority of a local ordinance which had directed that they were to be translated into French and deposited in the Registry for the guidance of the Court.

So long as the population remained mainly French, very little inconvenience was caused by the absence of a written set of laws since recourse could always be had to the old French authorities where the *Code de la Martinique* was silent. But gradually, there inevitably grew an increasingly stronger British influence, and a consequent lack of sympathy between the spirit of the law to be administered and the administering authorities. Conditions in the island were undergoing a material change as the English population and influence increased and gradually replaced that of the French. Therefore no matter how lucid and simple the Civil law was, or how genuine and sincere

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[49a] One of the Commissioners, Mr. Henry Maddock, in fact died in St. Lucia on 29 August 1824. Unlike the reports of the other territories that of St. Lucia was never published, mainly because the Commissioners took so long over their task.

[50] If the Commissioners were referring entirely to statutes passed by the British Parliament and extended to the colonies generally, one could share their concern; but it is clear that the terms of the capitulation forbade any implied introduction of English law in St. Lucia.

[51] 5 Geo. 4, C. 113.

[52] 6 Geo. 4, C. 73.

[53] 6 Geo. 4, C. 94.

[54] 6 Geo. 4, C. 114.

was the endeavour by the British administrators to apply it in a manner consonant with its true spirit, it was almost impossible for lawyers trained under the English common law system not to import into their administration an interpretation of an alien system of law, especially where it was written in a different language, much of that inclination of thought, and many of those habits of reasoning which schooling in a different system had instilled into them.

Although the records reveal that Lt. Colonel Burzon, the Lieutenant-Governor, had ordered the consolidation of the laws in 1829,[55] nothing seems to have been done about it. When, however, the Colonial office decided in 1831 to change the Civil law Court system which had been inherited in the territories of British Guiana, Trinidad[56] and St. Lucia, and proceeded to do so by Imperial Order-in-Council, the anger of the planters in St. Lucia was expressed in a petition which ended with the suggestion —

"that the order for improving the administration of justice must have been framed in mockery of the unfortunate inhabitants whose lives and fortunes it has placed at the mercy of salaried judges holding office during the pleasure of a saintly cabal, who notoriously rule the colonial department and whose creatures appear thrust into force in these colonies as spies and informers to calumniate and traduce the unfortunate slave-holder."[57]

One year later the Colonial Secretary enquired whether the time had come to introduce English as the language in which oral pleadings of the courts should thenceforth be conducted. He was reminded by the Governor that it was only in February of the previous year that the Bar was told that a change might be in the offing without mention of a possible future date; and suggested a three year delay, because it was feared that if the change was carried through then, only one barrister would qualify to plead in English, consequently others would lose their clients, and the public would generally be without the advantage of Counsel. The following examples of speeches of Counsel which may be taken as specimens of the most approved style at that time, bear witness to the fact that this fear may have been well-founded.[58]

CASE FOR WILLIAM SINGLETON

"May it please the Court.

"This is an action on behalf of your humble *servitor,* the Honourable William Singleton, trading under the *copartnery-firm* of Singleton and Co.,

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[55] C.O. 253/30.

[56] Trinidad was conquered from Spain in 1797 and British Guiana was similarly obtained from Holland in 1803.

[57] C.O. 253/37.

[58] C.O. 253/39.

to recover damages against the *defender,* Mr. Philip Pajol, under the following circumstances. My client is the owner of a lumber-yard in this town, comprising about two *carres* of land, and surrounded with a stone-wall. The *defender* occupies a house and yard conterminous with this lumber-yard, and is at present building and erecting an oven right against the said wall, to the great risk of the *pursuer,* and the *nuisance* of his property; and is using the said wall for letting in stones, whereon to rest and support the timbers of the said oven, in the very teeth of the law, and contrary to the rights both of property and servitude extant in the person of the pursuer. [Burge vol. iii, p. 407 (A), and p. 408 (F)].

"The *pursuer* has repeatedly desired the *defender* to desist, and represented the danger to the said lumber-yard, in the event of a spark falling from the chimney upon his shingles (the top of the said chimney being just on a level with the piled wood of the *pursuer,* and to windward of the same) which danger may extend to the town and even to the shipping in the bay; but the said *defender* persists, *vi et armis,* in the execution of his undertaking, to the wrongous usurpation of, and encroachment upon, the *pursuer's* wall.

"The *pursuer* further begs to state that he had a *signification* served upon the *defender* by the Marshal's *huissier,* calling upon him, in the name of the Queen and of justice to desist: — and what was his reply? This honourable Court will be Horrified when I state that he said he would make no reply at all! — which amounts *ex facie* to nothing more nor less than a high contempt of the Court's dignity. Of course, it is not for me to say what the Court, in its sapience, ought to do with this contumacious contemner of the law; but this I will say that a more aggravated case of *rebellion a justice* has never come under my notice!

"The *pursuer's conclusions* are, therefore, that the Court may be pleased to *interdict,* prohibit, and *discharge* the said Pajol from proceeding with his said erection — failing which, within the delay of three days from the *deliverance* of the Court, that he be *decerned* and ordained to pay the *pursuer,* in real and effective money of this Colony, and even *par corps,* the sum of one hundred pounds sterling, in name of damages, for the torts inflicted on the *pursuer,* together with all legal *accessories,* under *protestation* to add and eke — As *accords* of Law!

"Before I resume my seat, and to avoid all *chicane* as to the meaning of the word "wall", I beg to refer the *defender* to Dr. Johnson's Dictionary."

DEFENCE OF PAJOL

"May it please the Court.

"I appear in this case for Mr. Philip Pajol, the *defender.* Your Honors have heard the *plaidoire* of my learned *confrère;* and *certes* a more extraor-

dinary piece of forensic *fanfaronnade* has seldom been exhibited in a Court of Justice! "Well might the uninitiated exclaim: "Oh! the glorious unintelligibility of the law!" The *pursuer* first proceeds to raise a foundation of lumber, and thereupon he erects a Babel of words — crowning the whole with a chimney, to show that his arguments must end in smoke. It will be no difficult task, I apprehend, to demolish this *échafaudage,* and without expatiating *de omnibus rebus et quibusdam aliis,* after the fashion of the adverse party, I shall grapple at once with the facts of the case.

"Somewhere about the year one thousand seven hundred and sixty-five, the *defender's auteur* purchased the lot of land "adjoining that of the *pursuer* (and here I may observe, *en passant,* that the Honourable Mr. Singleton has proceeded on a false narrative of the extent of his lot, which only comprises a *carre* and a half). The *defender's auteur* engaged himself with the auteur of the *pursuer* to have a *mitoyen* wall constructed between their respective lots. Now, my client's *auteur, qua bonus pater-familias,* has punctually *implemented* his part of the contract, while the *pursuer's* has failed to do his. It is, therefore, abundantly obvious that Pajol has *de facto,* as well as *de jure,* the *dominium* of the wall in question. If the pursuer has gone to sleep, instead of *implementing* his part of the engagement, he must take the consequences; *vigilantibus, non dormientibus, inserviunt leges.* I humbly apprehend that the position of the parties must be reversed; and that, *mutatis mutandis,* my client is entitled to damages for breach of agreement and *warrandice.* In further elucidation of this position, I request the Court to cast an eye over the *hypothecary inscription* in the dossier of my client, which I now submit on the Court's *bureau.*

"Here I might pause for the Honourable *pursuer's* retort to these *dilatory* pleas; but from a note which has just this moment been placed in my hands, I am prepared to bring forward a *peremptory* exception. It now turns out that the wall in question is the *pro-indiviso* property, not of the *defender,* as I had been led to believe, but of the Demoisell Adelaide Coco; and that the *defender* merely conducts the erection at her request. Therefore the *requete* introducing the *instance* is egregiously *inept* — it is *in gremio* a perfect nullity, and must fall to the ground. Therefore the *defender* has been most unwarrantably, I might have said illegally, dragged into Court, and is entitled to damages (Domat. vol. iv. titre v. — *de damnis et impensis*). Wherefore I move the Court to grant me *acte* of my *reserves* to prosecute, *en temps et lieu,* for the gross, wanton, and unprovoked libel that has been levelled against my client's character.

"My learned brother has referred us to Johnson's Dictionary — the *convenient* pocket edition, I apprehend, which he carries about him; but if he will take the trouble to *feuilleter* the folio edition with notes and annota-

tions, it may throw some light upon the meaning which *ought* to be attached to the word "wall". That he will find in my *study,* to which I beg to refer him *brevitatis causa.*

"My *conclusions* are: primo, that it may please the Court to interdict the *pursuer* from molesting and disturbing my client in the quiet and peaceable erection of his oven — or rather Miss Coco's oven — and the necessary walls and chimneys of the same; *secundo,* that the *ordinance* of the Court *ad factum prestandum* be *cassed,* rescinded, and annulled, inasmuch as the fact has become *imprestable; tertio,* that the *pursuer* be *decerned* and adjudged to empty his hands into those of the defender, of the sum of £200 sterling in lieu of damages, for the injury inflicted on his fair fame, by the acts and proceedings of the *pursuer,* and the said *defender* be *reponed* and restored there against *in integrum;* and *quarto,* by way of *subsidiary conclusions,* that the *pursuer* be dismissed *simpliciter,* under the law of common sense, save his recourse against qui *de droit.* — And this is justice!"

Of the three judges who constituted the Court at that time, Breen has this to say:[59]

"Mr. John Paynter Musson (who) occupied the office of First President, ... was distinguished for urbanity of manners, an extensive knowledge of English law and practice, and an easy and dignified elocution. His qualifications for the Bar or the Bench might have ensured success in any *English* colony; but he was totally destitute of all knowledge of the French laws or language.... M. Mallet Paret, from his long experience, both as a lawyer and as *Procureur du Roi,* was the best selection that could have been made; (but) the other Mr. William Henry Grant, was quite the reverse — being a person utterly ignorant of the French language, without the slightest professional knowledge of the laws of the country, or indeed of any country — one, in short whose only recommendation for the elevated office of Puisne Judge in the Supreme Court, was his being the intimate friend of Mr. Musson, and his having been a Justice of the Peace in Barbados."

Despite his obvious inability to undertake such a task Musson C.J. had obtained the approval of Council for a proposal to consolidate the laws. The project was to take two years and the princely sum of £500 was to be paid to a secretary of his own choosing. Since the territory could not afford that sum permission had to be obtained from the Secretary of State who turned down the idea. But the Chief Justice was of the firm opinion that the Chief Secretary of St. Lucia must have recommended to the Secretary of State that the pro-

[59] Pp. 333/4; see also C.O. 253/40.

posed project was unsound, because he had refused to accept a secretary chosen by the Chief Secretary.[60]

Breen[61] recounts the abortive attempt thus:—

"The first measure, if not the only one, that marked Mr. Musson's judicial career, was a scheme for the consolidation and amendment of the laws of the Colony — a scheme which, strange to say, received the sanction and encouragement of the Governor and Council. That there should have appeared a necessity for revising the slave-code and the criminal jurisprudence, no one, at all acquainted with the anomalous and defective system which still prevailed in reference in these cardinal questions, will venture to deny: but that the codification of the entire body of the laws should have been resolved upon, will appear no less credible, than that such an undertaking should have been entrusted to one who was ignorant even of the "titles" of those laws, and, if pointed out to him, incapable of comprehending them in the only language in which they were written. Little indeed did Mr. Musson suspect that the system which he undertook to revise comprised nearly the whole of the French laws previously to 1789 — the accumulated experience of ages — the united wisdom of France's proudest law givers and statesmen, her Colberts, her l'Hospitals, her d'Auguesseaus, and that those laws were scattered over a vast number of authorities — the Coutume de Paris, the Code de la Martinique; the Ordonnances, the Declarations, Edicts, and Letters Patent of the French Monarchy; the Decrees of the Council of State; the Instructions and Decisions of the Colonial Ministers; the Regulations of the Conseil Souverain of Martinique; Pothier, Merlin, Ferriere, Jousse, Domat, *Serpillon,* Pigeau; the Local Ordinances; English Commercial Law; Acts of the Imperial Parliament; and Orders of the Sovereign in Council. Had it been otherwise, it is but charitable to suppose that he would have recoiled from a task of such magnitude and responsibility. Happily the prompt interposition of Viscount "Goderich spared the Colony the exhibition of a piece of Utopian Legislation unparalleled in colonial history."

An enquiry in 1833 revealed that copies of the Code de la Martinique were still unobtainable in the island.[62] By this time only judges trained in English law were being appointed, and in complaining about their conduct in the administration of justice, the Governor reminded the Secretary of State that since all pleadings in the Court were conducted in French, substantial justice could not be expected from judges who were not thoroughly conversant with that language.[63]

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60 C.O. 253/40.
61 Pp. 334/6.
62 C.O. 253/44.
63 C.O. 243/46.

The three years grace which had been given in 1832 for the introduction of English as the language of the Courts was about to expire, when, in anticipation of this, a petition from the Procureurs, Notaries and certain other inhabitants was addressed to the Governor praying that French be continued as the language of the Courts, and in judicial proceedings until 1840 when the apprenticeship of labourers would have ended.[64] It read in part: "Your petitioners.... (are) threatened with a change of language which, if effected especially at present, would consummate their ruin, and that of all those who exercise any honourable profession in this island."[65]

In a determined attempt to resolve the matter, the Secretary of State suggested the introduction "by gentle degrees" of the English language into the legal proceedings of the island under the following conditions; and an announcement to that effect was accordingly made by the Governor:

"1. All advocates who were practising at the Bar or called to it within six months from the date of the notice of the arrangement were to be allowed to plead optionally in French or English."

"2. All Advocates called after that period were to plead in English only."

"3. All legal proceedings were to be conducted in English only from 1st August 1840."[66]

This attempt at a peaceful transformation received a set back in 1837 when an argument arose between the Officer administering the Government, Colonel Bunbury, and his Chief Justice as to the limits of each other's authority; and eventually, goaded to desperation by the difficulties of his position the Colonel decided to make a general onslaught upon all his opponents. The Chief Justice was suspended; the First Puisne Judge was sent to prison; the members of the Bar, refusing to plead before the new Judges, were suspended *en masse;* and to crown it all the French language was abolished by beat of drum.[67] This state of affairs continued for a whole year after which Colonel Bunbury was replaced; his proclamation was revoked, and orders were issued to restore men and matters to their former position.[68]

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[64] The connection seems far fetched. This was obviously another of several delaying tactics.

[65] C.O. 253/48.

[66] C.O. 253/70.

[67] BREEN, p. 401. The "Drum beat" provided the publicity necessary to inform the inhabitants of the proclamation of a new law. Art. 3 of the Code provides a more conventional method by which ordinances are to come into operation.

[68] C.O. 253/61.

On 22nd January, 1840 a notice published in the Gazette ordered that as from 4th August of that year all legal proceedings should be conducted in English; and this prompted an immediate petition for a further postponement from the Advocates, Attorneys, Notaries and other inhabitants who prayed that the Secretary of State "....be induced to further postpone the operation of the contemplated change in the language of this colony as a measure the effect of which, whilst it would be certain cause of confusion and ruin to numbers of Her Majesty's loyal subjects in the colony, could not confer the shadow of an advantage or benefit to a single individual."

The new Secretary of State, Lord John Russell, agreed to postpone the operation of this order for two reasons: First he wanted to find out from the local authorities whether the time for change was opportune; and secondly because he was not happy with the manner in which the change was introduced. It was his opinion that such an important change should not be brought about simply on the authority of a despatch from a Secretary of State. The opinion of the local authorities was received early in the following year with a further petition asking for postponement; but the reply was definite: the change should take place. Authority was therefore given to proclaim that English would be introduced into the courts of justice in St. Lucia from 1st January 1842.[69]

In a last effort to stem the tide of events, yet another petition was addressed to the Secretary of State in November 1841 just before the proclamation was due to come into force, but this last minute effort was of no avail.

After reminding the Governor that the change had taken place after many notices, the despatch from the Secretary of State continued: "I suppose it is now too late to retreat; in fact it never could be made at all, if we were to wait till English had become the vernacular tongue. One of the main objects of the measure is to promote that change. The complaint is plainly exaggerated. Witnesses must speak in the language they understand and prisoners must defend themselves in the same language. But the judges, assessors and the advocates must speak and understand English. In this country we know very well from the examples of Wales and of Ireland, that the difficulty is more imaginary than real. Probably some French lawyers will be thrown out of business or injured in their business. But this, I believe, will prove to be the extent of the evil."[70]

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[69] C.O. 253/73.
[70] C.O. 253/74.

PART FOUR

CODIFICATION OF THE LAWS 1842-1879

The proclamation of 1842 was meant simply to substitute English for French as the language of the courts; but the more frequent use of English soon spread into everyday transactions. The negro population fell between the two stools. Despite the fact that the petition of 1835 prayed for the postponement of English until the apprenticeship system had been brought to an end (presumably to enable the negroes to learn the rudiments of the new language) they now found themselves unable to communicate fluently in either language. The "patois"[71] which they used in everyday intercourse is aptly described by Breen:[72] [....] "it is in effect the French language stripped of its manly and dignified ornaments and travestied for the accomodation of children and toothless old women."

Although laws continued to be printed in both languages for a long time afterwards, the French version inevitably got more inaccurate. In 1848 Governor Darling reported to the Legislative Council that during a recent visit to different parts of the island, he found that details of a recent Tax ordinance which related to the excise of rum had in some instances been misunderstood, and in others had created the apprehension that this would entail needless and annoying surveillance upon producers in their manufacture of the article. In order to remove these misconceptions he directed the publication of a more correct French version of the clause in question[73]. In the annual report on the State of the laws of St. Lucia, printed in the Blue Book of 1844, Chief Justice Reddie had complained of the confusion which then existed, and suggested that as a Code would be the work of a lifetime, extracts could be translated from *Code de la Martinique,* the *Coutume de Paris* and from Local ordinances. The Chief Justice had a champion for the cause in Governor Torrens who took up the matter in the following year.

In his address to the Legislative Council in December 1845, Governor Torrens said that he never ceased to lament that no compilation of her laws existed in St. Lucia. He pointed out that the only competent collection had been made by Mr. Hanley the Colonial Secretary from the records of the Registry with commendable pains and zeal, and for obvious precautionary reasons it should not leave the Secretary's office. He stressed the importance of the matter by informing members that:- "The Head of the Local Government, the Judge on the Bench, the Law Officer, the Barrister, the Special Magistrate and Justice of the Peace are each unprovided with an entire man-

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[71] This curious mixture of adulterated French (and some English) is still commonly spoken in St. Lucia and Dominica.

[72] P. 185.

[73] C.O. 256/5.

ual of the laws, which, in their various spheres, thay are to administer and enforce, and which it is their duty to know; and her Majesty's subjects in St. Lucia have no means of general acquaintance with the laws under which they live save by heresay, custom and such uncertain means.''[74]

His stated reason for bringing up the matter then was that if the Council agreed to the printing, the amount should form an item in the Estimates for the following June. It was then resolved that a committee comprising Mr. J.G. Porter Athill, the Attorney General, as Chairman, Mr. Louis La Caze, Solicitor-General and Mr. C. Mallet Paret were to report on the collection made by the Colonial Secretary and to set in motion the machinery for translating, revising, collecting and printing the laws of the island.[75] By that time the island had already witnessed the introduction of a fair amount of English law and new offices through ordinances passed by the Legislature. They had introduced successively English Commercial Law, the English law of Mortgage, English rules of practice and evidence in criminal matters, the English Justice of the Peace had replaced the French Commissiary Commandant, the Provost Marshal was substituted for the Hussiers, the office of Coroner was created, English currency had been adopted, and English had already been introduced as the language of the courts.

In an obvious effort to see the matter through during his term of office, Governor Torrens made enquiries in Canada about the efforts being made to codify the laws of Québec; and he was informed by Governor General Cathcart that an English edition of the Code was being printed in that country.[76] A request made by the Colonial Office of Governor General Elgin, Cathcart's successor, did not however prove fruitful; and when the request from St. Lucia to the Colonial Office was renewed in the following year, the Governor was sent a copy of a book entitled ''Fundamental Principles of the laws of Canada'', on the assumption that this was what was needed.[77]

When addressing his final meeting of the Council in May 1846, Governor Torrens again reverted to the condition of the laws, he reminded members that ''six months before he had brought to their notice the project of collecting and printing the laws and it would have given him satisfaction to have seen some progress before his departure; but although he had received a preliminary report from the Committee which he would lay before them, their preparatory measures were not as yet sufficiently advanced to encourage him to propose a vote for expenditure at that stage.'' However, he urged the Council that on no account should they allow the project to drop.

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[74] C.O. 321/22.
[75] C.O. 256/4.
[76] C.O. 256/5.
[77] C.O. 253/87.

The report which was then tabled by the Governor had been written on elaborately printed letter heads. It began by reporting progress. Members had met frequently and had had 'five lengthened meetings.' They had already gone over the entire *Code de la Martinique* 'comprising five large volumes.' They then suggested that in order to enable them to proceed further without subjecting themselves "to the personal drudgery of mere scrivenery, copying etc." a sum of £60 or £80 be placed at their disposal. The report concluded by boasting that if they got that sum "we feel sanguine that this long desired but long postponed undertaking will eventually be brought to a successful and satisfactory issue." On a motion by the Attorney General seconded by the Solicitor-General, both of whom were members of the Committee, the report was adopted, and contrary to the advice of Governor Torrens £60 was placed at the disposal of the Committee.

In November of the same year the Committee submitted its second report to the Legislative Council. It continued to report progress, but warned that although the work of the members, as lawyers, prevented them from giving too much attention to the project, that was in itself a safeguard. They had spent more than half of the grant and the remainder had been 'forestalled'. Quite naturally they wanted a further sum to complete the work; and they anticipated completion by the beginning of April 1847 if English copies of the *Coutume de Paris* which were on order had arrived in the meantime. Their work, the report continued, had been divided into three parts:

1. *Coutume de Paris*. Mr. Mallet Paret was assigned to select the parts which were considered to be in force in the island.

2. *Code de la Martinique*. Mr. Du Maulin an Irish solicitor had translated this under the supervision of the Attorney-General and the Solicitor-General, and the entire Committee had chosen those parts which they thought were in force in St. Lucia.

3. Laws passed under British rule. The entire Committee had worked on this together.

No more was heard of or from the committee until March 1848 when in answer to a request by Governor Darling that the Committee should state the progress made on the reprinting of the local ordinances, the Attorney-General replied briefly that the objection that the laws of St. Lucia had never yet been collected or reduced into the language of the Mother country would to a great extent be removed by the labours of the committee who were still awaiting a copy of the translation of the *Coutume de Paris* from Canada. This was indeed the last to be heard of the Committee, because when the Solicitor-General had been appointed to act as Chief Justice in January 1848, and the Attorney-General was himself subsequently elevated to the Bench, they ceased

to be members of the Legislative Council and consequently members of the Committee.

Governor Darling who had meanwhile replaced Governor Torrens at the head of the administration seemed, like his predecessor, to have been imbued with some amount of enthusiasm to obtain for St. Lucia a complete collection of her laws in English, and he lost no time in taking up the subject. At a meeting of the Legislative Council in March 1848, he reported that representations had reached him of the inconvenience felt from the want of printed copies of many of the laws in force. He understood that that important matter had some time been in the hands of a committee and that the compilation was being delayed from a desire that certain portions of the law affecting property which were contained in the *Coutume de Paris* should be published at the same time. But since this would probably involve further delay he urged that some steps be taken immediately to remedy that evil.

For the reasons already stated no further activity was undertaken by the Committee; but Governor Darling did not permit the matter to rest and his personal efforts which culminated in the publication of the first authenticated collection of the laws of St. Lucia in 1853 are best told in his own words. In 1851 in a despatch to the Governor of the Windward Islands who was then stationed in Barbados in which he enclosed a copy of his efforts as passed by the Legislative Council, he first reviewed the work of the Committee and continued:

"I knew that they were far from accordant in their views regarding the manner in which this task should be undertaken. I asked for the result of their labours and found to my surprise that this consisted of manuscript copies of Laws of St. Lucia already in print and easily obtainable while those difficult to procure had not been touched. They had also prepared translations of the *Code de la Martinique* but contrary to their reports they could not produce any proof of having touched the works of the French commentators. I therefore took the matter into my own hands and can now report to have completed a collection of all the St. Lucia laws, ordinances, Orders-in-Council, Orders of Government and proclamations since the island came under British rule. Instead of printing the doubtful translations which have been prepared of the laws from the *Code de la Martinique* many of which have become inapplicable in consequent of recent enactments of the Legislature, a more limited selection has been made to be printed in French leaving it to the Government interpreter of the Court to translate it as and when necessary."[78]

The Ordinance to give legal effect to the Governor's efforts was passed by the Legislative Council in June 1851 and forwarded to the Secretary of

[78] C.O. 253/107.

State. It was thought, however, that although the work had been executed with care and was undoubtedly of immense value, insufficient explanations had been given for the reasons for the repeals, and of the circumstances which had rendered some Ordinances inoperative and superfluous. After further reports from the territory the Ordinance was finally approved, thus ending one chapter in the legal history of St. Lucia.

The transfer of Governor Darling was followed by a consequent loss of interest in the project, for the matter was dropped unceremoniously despite the fact that considerable sums of public money had been spent on the venture. No trace of the labours of the committee had survived, and in the words of a subsequent committee headed by Armstrong, C.J. "Masterly inactivity succeeded in destroying Governor Torrens' praiseworthy project, and which had the warm support of Governor Darling. There was evidently no hearty desire to endow St. Lucia with a volume of laws which everyone could read for himself."[79]

Thereafter the administration of justice proceeded with perhaps even greater uncertainty than before, for from 1849 to 1872 the Chief Justices of St. Lucia did not even understand French sufficiently to be able to read the law in the language of the books in which it could be found, and "Burge" was the only book which was quoted in the Royal Court.[80] The population figures for the period also indicate a marked decrease in the number of French white persons in the colony. Out of a population of 20,918 in 1788, 2,159 of them or roughly ten percent were white; by 1814, the figures were 17,485 and 1,210 respectively; and in 1869, out of a total population of just under 35,000, there were only 900 whites or just over two and one half per cent.[81] When it is remembered that many British-people would have been attracted to the Island after the cession, it is quite clear that the numbers of the French had been very greatly reduced.

In the meantime, yet another Committee had been appointed and failed because its members had simply adopted the Québec Code with the mere alteration of the local terms, and, except for a comparatively small portion of the draft which was based on English law, the English version was so literal a translation of the French as to be almost unintelligible, and in some cases was even misleading when standing alone.[82] However the opportune appointment of two conscientious men viz. William Des Vœux as Adminis-

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[79] C.O. 321/22.

[80] See e.g. *Marquis* v. *Cenac,* decided by the Windward Islands Court of Appeal on 7 August 1866 (unreported).

[81] See CLARKE p. 299 and DES VŒUX p. 149. BREEN (p. 165) also confirms this trend with figures given for the years 1772, 1789, 1810, 1825 and 1843.

[82] C.O. 321/12.

trator in 1869, and James Armstrong as Chief Justice three years later, provided the final impetus needed to see the project through; and by their combined efforts, which still stands as a monument to the industry and conscientiousness of civil servants of their day, they provided St. Lucia with a Civil Code and a Code of Civil Procedure.[83] On his arrival in St. Lucia Chief Justice Armstrong's attention was at once attracted by the unsatisfactory state of the law and after adverting to the fact that Québec had then codified her laws he expressed the opinion that the laws of St. Lucia could similarly be adopted to its wants.[84] The ordinary uncertainty of the law was increased by vagueness of knowledge as to what law was actually in force. There were also many decisions of the Windward Islands Court of Appeal,[85] which was composed of English judges uninstructed in the Civil Law who sometimes expressed open contempt for the law of St. Lucia as being French.[86] In order, therefore, to restore some amount of certainty, the Chief Justice proposed the introduction of the English versions of both the Civil Code and the Code of Civil Procedure of Québec.

The prospect of printing the Code in both English and French was discarded, first because it would double the expense, and secondly and perhaps more importantly because it would tend to perpetrate the use of French in the island. On the other hand it was thought that the English version — with the exception of the Articles on Commercial Law — would be misleading when printed alone and would perhaps not be sufficiently intelligible to, and might create hopeless confusion in the minds of, the local lawyers. Added to this was the Administrator's personal reason which he expressed thus: "Furthermore I found various provisions in this otherwise excellent Code which, as savouring of priestly influence, I could have no part in legalising."[87]

The Chief Justice was most anxious to bring into force some kind of Code immediately in order to reintroduce some form of certainty into the

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[83] James Armstrong was a Canadian advocate from the ship-building town of Sorel in Quebec; and William Des Vœux had passed a comprehensive examination in Civil law before being admitted to the Ontario Bar.

The idea of having a Canadian Barrister as Chief Justice was first mooted as early as 1826. C.O. 253/22.

[84] C.O. 253/148. At a meeting of the Legislative Council held on 24 April 1872 a committee consisting of the Attorney-General, Mr. La Caze and Mr. P.J.K. Ferguson was appointed to consult with the Chief Justice regarding the codification of the existing laws of St. Lucia; but it would appear that their efforts were not productive.

[85] This Court was made up of the Chief Justices of the various islands. It was possible (and frequently did happen) therefore for judges to hear appeals against their own judgments. See *Du Boulay* v. *Du Boulay*, *ante* n. 25.

[86] DES VŒUX p. 210.

[87] DES VŒUX p. 211.

law, but the Administrator managed to persuade him that together they could read the English version of the Code; and make the required alterations as they went along. For the next two and a half years these two officers spent many of their evenings reading the Québec Code together and making such corrections and alterations as they thought necessary. Two further copies of the Québec Code were obtained for the purpose and in March 1875, Administrator Des Vœux reported to the Legislature that the draft of the new Civil Code had been completed.[88] It was reproduced and then rechecked by the compilers and a copy was deposited in the Registry for inspection. As soon as its contents became generally known the objections began to pour in. The opposition was centred mainly around the Roman Catholic Church and the Merchants.

The Merchants opposed the provisions which sought to abolish imprisonment for debt. These were based on the lines of recent legislation passed in the United Kingdom[89] and did in fact have the blessing of the Secretary of State. Des Vœux insisted upon this change because there were many cases where the merchants took advantage of the existing law not only to punish by imprisonment debtors who were in a position to pay, but also to keep in prison for long periods unfortunate people who had no means of paying simply out of revenge.[90] But the Church was more determined in its opposition and so was Administrator Des Vœux as the following account reveals.

The Roman Catholic clergy were particularly opposed to the provisions relating to Civil marriage and to the failure of the Code to recognise the

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[88] For most of the detailed happenings from the time that the Code was being drafted to the piloting of the Ordinance through the legislature the only source of information is Administrator Des Vœux's memoirs; but in *Ex parte Mongsignor William Floissac, D.D.* (1934) St. Luc. Gaz. p. 184, J.E.M. SALMON Acting C.J. had this to say: "Although the then Administrator of the Colony, afterwards Sir G.W. Des Vœux, who had had Canadian experience, is mentioned as one of the compilers of our Civil Code, this Code was principally the work of Mr. James Armstrong, then Chief Justice of the Colony, a Canadian Advocate, oddly enough, from Sorel, the place where Paradis died.

Whenever therefore our Code differs from its Canadian model, the change is generally due to Judge Armstrong's local judicial experience and the needs of the colony as he understood them. I add, that I have had many an interesting conversation with the old Judge, while boarding at the same hotel, and received valuable advice from him."

[89] 32 & 33 Vict. C. 62 as amended by 41 & 42 Vict. c. 54. This was included as Arts. 2133 to 2140. See C.O. 253/140.

[90] The Report of the Commissions of Inquiry into the Civil and Criminal justice in the West Indies (p. 110) reveals the existence of a similar pattern of behaviour in British Honduras by quoting this conclusion of the Grand Court of that territory in *Re Edward Meighan* (1823) "The Court in conclusion cannot pass unnoticed the overstrained correctness of the representative in apparently asserting the rights of the creditors while it appears to them, that the real intention of the defendant arises in a want of humanity by so glaring an attempt to deprive a person of liberty."

dispensing power of the Church in marriages between persons within the prohibited degrees of kinship, but they also lacked sympathy with the sections relating to marriage *in extremis*.[91] Their argument which was supported by the Attonney-General was short and simple viz. that the proposed provisions were in violation of the Proclamation of 1803 which guaranteed the unrestricted exercise of religious worship. The letter addressed to the Governor-in-Chief on behalf of the Archbishop[92] expresses the mood at the time:—

"It has come to my knowledge that a Code to regulate the laws of marriage is to be placed before the Council in August. The clauses are in some instances at variance with the discipline and doctrine of the Catholic Church. The population is almost entirely Catholic and this is an infringement on their religious liberty. It recognises a civil marriage of Roman Catholics as lawful and valid. The Church does not. So that what the State declares to be a marriage the Church declares not to be. What good can be hoped for by promoting an antagonism of this kind? Again the dispensing power is taken away from the Church and the impediments decreed by her are not allowed. No provision is made for marriage *in extremis*. The Attorney General has done what as a Catholic he ought to do, namely, consulted his Archbishop and ascertained if he can vote lawfully for such an Ordinance; he is ready to tender his resignation rather than violate his conscience. The judgment of the Archbishop is that he cannot conscientiously vote for the clauses which contradict the laws of the Church.

"I therefore call upon you very respectfully as the Governor in Charge to put a stop to this very unnecessary and injurious interference with the guaranteed liberties of the Catholic Church in St. Lucia and to put a stop to a scandal which is calculated to arouse among the people angry feelings of just indignation.

"In the name of the Archbishop and of religious liberty I protest against this unjustified interference with the marriage laws of the Catholic Church in the catholic island of St. Lucia."

In the island itself the clergy had not been idle; and were in fact favoured by a timely visit to St. Lucia of the Governor-in-Chief Sir John Pope-Hennessy (who normally resided in Barbados). He was invited to a breakfast given for a large number of guests, most of whom were Roman Catholics, but to which Des Vœux had not been invited; and they managed to persuade him that the provisions relating to marriage were not in the best interests of

[91] Variously known in the Caribbean as clinical marriage, marriage in *articulo mortis* or deathbed marriage, it provides for the solemnisation of marriage between two persons, one or both of whom is on the point of death if certain conditions are satisfied.

[92] As the Archbishop was on leave the letter was in fact sent by the Co-adjutor.

the majority of the population who were in fact Roman Catholics.[93] Des Vœux writes:[94] "It is reported that the conversation was mainly about politics. Whether or not this was true he (Hennessy) was looked upon as a sure opponent of the Code: at least as regards those obnoxious provisions. This was fully proved by subsequent events."

Originally it was thought sufficient to append to the Code a brief opinion by the Chief Justice on the state of the law relating to marriage in the island and the reasons for change; and to have the Code debated clause by clause in the Legislative Council even though such a procedure would have taken months to complete. But two things brought about a change in these plans. First in July 1876, Des Vœux was summoned to England, and he feared that he might not return to St. Lucia. Secondly the Chief Justice had begun to weaken under the bitter feelings which Roman Catholic hostility against the marriage provisions had engendered in the island, and he had publicly made it known that Des Vœux was the sole author of those provisions. It was clear therefore that in Des Vœux's absence he could not be depended on to maintain his position firmly against an opposition which had the Governor-in-Chief in sympathy with it.

In an anxious effort to save 'three years of weary work' Des Vœux devised a plan to get an Ordinance passed through Council before he left for England, which, though it would not ensure that the Code as drafted would be enacted by the Legislature, would nevertheless be evidence of an irrevocable decision to enact some sort of Code; whereas on the personal level his signature would be attached to the Ordinance in question. The device which had occurred to Des Vœux "when I was almost in despair [....] during a sleepless night, by a kind of inspiration" and which he immediately put into effect was as follows:—

A Bill was drafted in which the Code appeared as a schedule, it contained a clause suspending its operation until Her Majesty's sanction was proclaimed, and legalising the Code as it might be amended in the meantime by the Legislative Council, whether under the instructions of the Secretary of State or otherwise. As he had correctly anticipated opposition was mainly centred around the objectionable provisions of the Code, but the Administrator was then able to point out that although ample opportunity would be provided later for an attack on those grievances the Ordinance itself was quite harmless and unobjectionable; and it was passed by the votes of the official

[93] Sir John Pope-Hennessy was himself a Roman Catholic. See Bruce HAMILTON, *Barbados and the Confederation Question,* (1956) p. 36.

[94] p. 270.

members.[95] As the unofficial members continued to protest against "the indiscreet haste with which the lately completed Civil Code of Laws has been forced through the Council," Des Vœux wrote to them individually and received replies from all but one stating that their objections were aimed at the Ordinance and not specifically against the introduction of a Code of Laws in St. Lucia.

To the Bill as passed, Des Vœux attached a copy of the minutes of the meeting of the Legislative Council at which the Ordinance was passed, the replies which he had received from the unofficial members, two reports by the Chief Justice explaining and supporting the provisions which dealt with the marriage laws, a report by the Attorney-General against those provisions, and his own reply to the Archbishop's letter, and asked for permission to assent to the Ordinance before leaving the island so that his name could appear on the result of his labour.

His letter began by noting the dictatorial and unbecoming tone of the Co-adjutor's protest and accepting full responsibility for the chapter on marriage. He pointed out that although the Order-in-Council of 7 September 1838[96] which was proclaimed in the island on 1 December of the same year, expressly provided for civil marriage and did not recognise marriage *in extremis* as having any effect; nevertheless the Catholic priests had for many years ignored these formalities altogether and had celebrated all marriages including those *in extremis* on the strength of dispensations by the Archbishop. He added that the proposed provisions were more liberal in respect of religious marriage than those prevailing in such Catholic countries as France, Belgium and Austria, where a civil ceremony was indispensable whereas the proposed provisions made it optional. He continued by saying that the provisions relating to marriage *in extremis* had been the law of France for more than a century, and were less stringent than those prevailing in Trinidad (whence the letter of protest had originated); and he concluded by adding that as to the non-recognition of the dispensing power of the church, this had been used not merely as against the legal formalities required by law, but to permit, in consideration of very heavy fees, the union of near

[95] Only one unofficial member was present at the third reading. DES VŒUX (p. 281) writes that although the Roman Catholic Members who voted for the bill were opposed to it at heart, they no doubt expected to justify themselves to their church on the ground that while fulfilling their duties as government servants they were in no way prejudicing an ultimate decision in favour of the ecclesiastical view.

[96] By this Order-in-Council a law of marriage was enacted for British Guiana, Trinidad, St. Lucia, Cape of Good Hope and Mauritius. The preamble declared that the old Marriage Laws of those colonies "have been found inappropriate" since the abolition of slavery and also "inadequate to the increased desire for lawful matrimony therein" and that "it is expedient to amend the said marriage laws [....]."

relatives. He was firmly of the opinion that no such power legally existed in St. Lucia, that most of the Catholic marriages for many years had been null and void and that if the question was ever raised it would have had to be settled by *ex post facto* legislation. "Just indignation indeed!" concluded Des Vœux, "I have received no complaints from anyone on these practices although the Code has been lying in the Registry for public inspection for several months and is a topic of frequest conversation."[97]

The Governor-in-Chief refused to accede to Des Vœux's request partly because of the objections of the unofficial members and partly because of the adverse report of his Attorney-General on the Ordinance and sent all the documents for the consideration of the Secretary of State in London.

The Attorney-General in Barbados was of the opinion that the Ordinance was open to serious criticism. It was true that it contained a suspending clause, but because of its importance he recommended that the Governor should not assent to it until it had been seen by the Secretary of State. In his view the question was whether it was better to assimilate the laws of St. Lucia to those of Lower Canada or to those of the Mother country. If the latter, a Code which had recently been prepared by Sir Julien Pauncefote for the Leeward Islands might be substituted.

The Colonial Office was very critical of both the Governor-in-Chief and the Attorney-General in Barbados and felt that Des Vœux should have been permitted to assent to the Ordinance in order to give recognition to his labour.[98] It was observed that although the machinery for passing the Ordinance was heavy it was quite unobjectionable; and the Governor was wrong to give as his reason for refusing "the objections of the unofficial members." The Attorney-General's reasons for advising the Governor not to assent were "simply foolish" and stemmed from "his own ignorance of the laws of St. Lucia." Furthermore it was felt that the law in St. Lucia was so uncertain, the sooner an authoritative declaration of some sort as to the law which should govern the colony was made the better it would be, especially as the Roman Catholic clergy held themselves above the law. Finally it was pointed out that since similar Roman Catholic clergy objection to civil marriage had been raised and over-ruled in Ceylon and Hong Kong, the Co-adjutor should be informed that no amendment which involved a departure from the general principles of civil marriage would be accepted.

Now that the Ordinance had been passed attention was then focussed on the schedule; but it would appear that the opposition had lost its momentum

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[97] C.O. 321/22.

[98] By this time Des Vœux had left the island and although he returned for a short time afterwards, the Ordinance had in the meantime been assented to.

due in large measure to the decision of the Secretary of State to reject the ecclesiastical objections. The procedure, which was approved by the Colonial Office, was that three Commissioners were to be appointed to examine the Code and to present a report to the Legislative Council. The Code when approved by Her Majesty was to become law, and in it were to be included any amendments made by Council and approved by the Queen, or required by Her Majesty to be included.

Chief Justice Armstrong, Attorney-General P.J.K. Ferguson and Mr. N.A. Cooke the Senior advocate of the Royal Court were appointed as Commissioners on 19 November 1877. Their report was submitted on 6 February 1878 and was immediately sent to the Colonial Office. After some amendments which had been proposed by the Secretary of State were included, the Code was approved at a meeting of the Legislative Council of 20 December 1878, and finally became law on 20 October 1879, thus ending a long chapter of uncertainty in the laws of St. Lucia.