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BERMUDA LAWS AND FRANCHISE.

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It is a constitutional maxim that when English colonists settle in a country, willy nilly, they bring with them the common law of England, and so much of the statute law in force at the time of their first effective settlement as will be applicable to them in their new conditions. Subsequent statutes passed by the Parliament at Westminster do not apply to the new colony unless distinctly made applicable by their provisions or by natural inference. Thus the Statute of Frauds, 1678, being subsequent to its settlement, has never been in force in Bermuda, and though its legislature has passed subsequent laws closely modelled on English statutes, much of its law remains uncodified. It has, for example, no Sale of Goods Act and no Bills of Exchange Act.

Until 1905 the old form of common law procedure by special forms of action obtained as in England before the Common Law Procedure Act, 1854.

The Bar.—This apparent failure to keep abreast of legal changes in England, it may be pointed out, was not the consequence of dunderheadedness on the part of its former Attorneys-General, who as the mouthpiece of the House of Assembly are responsible for introducing measures of law reform. Bermuda has a local bar qualification which consists in being born or having lived previously two years in Bermuda and reading as a pupil in chambers with a local barrister for three years. Procedure under the old system of actions of assumpsit and actions on the case became, as years rolled on, a kind of black art known only to members of the Bermuda bar, so that after the bar was opened to those who had been called by an Inn of Court in England, if they came to Bermuda, they were not likely to succeed unless they went into a local attorney's office and learnt the old forms of technical pleading, the retention of which was the only way in which the local bar could prevent itself being swamped with practitioners from other parts. It is still a rule that no practitioner can practise unless he has been resident in Bermuda three years. This means that a practitioner coming new to Bermuda must have sufficient means to support himself for three years, and the bulk of the work is kept by a few old-established firms of attorneys.¹

¹ There is fusion in the colony, an attorney doing the work of both barrister and solicitor. Many come to England to be called to the English bar.

Exception to English Law.—Another proof of the foresight of Bermudians lies in their refusal to adopt a Companies Act. A company can be formed in Bermuda only by private Act, which may be granted or refused by the Legislature, and the Act may afterwards be disallowed by the Colonial Office. A trading company is not exempted from the Mortmain Acts, and cannot without special Act of the Bermuda Legislature own land. Here again the intention is farseeing, to keep out speculators forming realty companies to buy land. Within recent years the principal industry in Bermuda has been the tourist and hotel trade. They are naturally determined to keep such a profitable industry to themselves, and not allow speculators from Florida to flock in and buy them out. For the same underlying motives no foreigner, unless naturalized under the Imperial Nationality and Status of Aliens Act, 1914, may own land in Bermuda, and if a foreigner marries a Bermudian woman owning land, she must sell it by reason of acquiring his nationality.

A great deal of casual labour is employed on the docks and in shipping. These are the only occupations in Bermuda where serious accidents are likely to occur. Consequently, there has never been any strong demand for an Employers' Liability Act, or a Workmen's Compensation Act. The doctrine of common employment may be utilized by Bermudian employers to escape liability for the negligence of their foremen, though there are no recent instances of such a defence. Lord Campbell's Fatal Accidents Act which was passed in England in 1846 was not copied in Bermuda until 1868, but there is little use for the Act, as employers always make voluntary provision for the dependents of a man killed by negligence, and again, no case has arisen under the Act. No trade union Act has ever been passed, and a trade union of masters or men is a common law conspiracy.

Bermuda, although it caters for American millionaires, takes care that they shall bring nothing but money into the Island. No motor-cars are allowed other than lorries for road making, and tourists as a consequence are obliged to patronize the local hackney-carriage drivers. A petrol-driven tramway has been laid down along the length of the Island, but, up till now, the American plutocrat has had to take himself to the luxurious golf links in a hired horse and trap.

These conservative tendencies are worth studying in detail, because they show that wherever there appear big gaps in legislation thought necessary over here, the reasons why they have not been filled in by the Bermudian legislature is that they know which side their bread is buttered and have, without giving reasons which might give offence to those by whom they live, decided to leave well alone. They cannot be blamed for their attitude. The well-to-do families in Bermuda have been traders settled there for centuries. Without the assistance of heraldry they can trace their forefathers back to Somers' shipwreck and know the villages in the West of England, from whence they came before that. During

the American War of Independence Bermuda remained loyal to the Motherland. Their prosperity has been built up as the result of generations of hardy seafaring without assistance from the English Treasury. They are determined to keep their prosperity to themselves, and are not inclined to surrender the machinery of legislation to a larger electorate who would make it possible for large numbers of undesirable and under-paid immigrants to settle there and reap where their forefathers previously sowed.

Taxation.—From the early days of the settlement until the latter half of the last century the bulk of trade came directly or indirectly from shipping and shipbuilding. The cedar trees with which the Island is covered made good timbers, and it was not until after the American Civil War, 1862–5, that steam drove her sailing ships from the Atlantic. From the Declaration of Independence until long after the American Civil War, Bermuda was England's most important Atlantic naval station. A repairing dockyard and a strong garrison were maintained on Ireland Island, and the money spent by the Imperial Government in building fortifications by local contracts and paying troops went ultimately into the pockets of the Bermudian shopkeepers. In 1869 a huge dry dock was built in England, towed across the Atlantic and secured at St. George. Tobacco, which received a bounty from the Somers Island Company, was the earliest crop, but during the last half of the nineteenth century when a rapidly increasing population in the Eastern part of the United States created a market, the cultivation of early vegetables gave employment to the negro population, until competing producers in the Southern States, aided by a high protective tariff, put a virtual end to the industry. The present tourist and hotel trade is about fifty years old. Bermuda has now become a haven of rest and enjoyment for American millionaires whose expensive tastes are hampered by prohibition in their own country. In an island where the bulk of commodities come from overseas, the simplest method of raising taxation is by an *ad valorem* duty upon imports which requires no expensive machinery to collect. Bermuda has consequently set herself against an income-tax and any form of direct taxation, and nearly all her revenue (about £250,000) is derived from customs. Whereas a duty upon articles of consumption is ordinarily a retrogressive duty inflicting an undue burden upon the working-class consumer, the incidence of the Bermuda customs duties falls largely upon the tourist and well-to-do residents. The duties force up the standard of living, but the worker is not unduly penalized, because his wages rise more in proportion, and the articles of consumption affected by the indirect taxation are articles of luxury, not normally included in his family budget.

Soon after the Settlement of Bermuda, negro slaves were brought to the Island, but in most cases they had been bred in the West Indies; few of them came direct from Africa. The proportion of negroes to whites has never been more than two-thirds, and, as the Island has always

been thickly populated, the negroes have been in close association with better-class whites for about three centuries.

Slavery.—Slavery continued until 1834, but in its later years it amounted to little more than an inability of a slave to make a free contract of service. Though he could not leave his master's employment voluntarily, neither could his master turn him adrift when he got too old to work, and in practice a master had to submit to a system of old-age pensions for his slaves after they got past sixty. The result has been to breed a much better type of negro than is found in the West Indies, and the Bermudian negro, when he finds himself in company with negroes from Jamaica—as for example happened during the War when a Bermuda battery (the first force of British coloured troops to be employed in France) under officers recruited from the Bermuda Militia Artillery later came into contact with the battalions of British West African infantry—he regards himself as much superior, and does not willingly associate with them.

Constitution.—The administration of the Island by the Somers Island Company came to an end in 1684, when the Company's charter was revoked, and a Governor was sent out from England. Bermuda developed a constitution similar to those of other colonies settled or ceded during the seventeenth and eighteenth centuries. It had a Governor and Council with executive and legislative functions, appointed by the Crown, and a House of Assembly elected by the free colonists generally on a franchise limited to freeholders. The Bahamas, Barbados and Bermuda are the only survivors of these original colonial constitutions. Others have either been granted responsible government, or, as a result of social or economic disasters, have had their representative institutions curtailed or abolished.

The present Governor is appointed from England and resides at Hamilton, to which Sir James Cockburn removed the capital from St. George. The Courts of Justice are also at Hamilton. The Governor is assisted by an Executive Council of six nominated by the Crown and a Legislative Council of nine similarly nominated. There is also a Legislative Assembly of thirty-six, elected four from each of the nine parishes into which the islands are divided.

Franchise.—Immediately prior to the emancipation of the slaves, the real property qualification for the electoral franchise was £40 assessed value, but the same measure which freed the slaves raised this qualification to £60. This was done to guard against the too sudden acquisition of political privileges by the newly freed coloured folk, and has never since been altered. As the bulk of the industry of the Island was at that time shipping and fishing and not agriculture, the economic life of the Island was not much affected by the emancipation. Bermuda is probably the only place in the world where black and white citizens have been brought into close contact without need for "colour bar" regulations.

Although the coloured folk of Bermuda are a healthy community with moral standards as high as most white races, the proportion of blacks to whites until quite recently was tending to diminish. This was due to the emigration of the negro male population to the U.S.A., and an increasing immigration of Portuguese. In the decade 1920-30 immigration of blacks to the U.S.A. as a result of Federal legislation has almost ceased. The proportion of coloured to white population under the 1931 census has therefore somewhat increased. The total population of Bermuda is about 28,000, of whom about 18,000 are coloured.¹

The first coloured member was elected to the House of Assembly fifty years ago, and at the present time there are four coloured members. The probability is that the future will see a gradual increase in the coloured membership, even if the franchise remains unaltered and restricted to whites.

The main reason why the colony has adhered to its £60 white male freehold franchise qualification since 1834 has been the fixed determination of the Bermudians that the government of the Island shall remain within the control of those who are permanently settled there. Although women have no vote, there was until 1923 no insistent demand for votes for women, because freeholders have regarded themselves as merely registering a vote on behalf of their families, who occupy the £60 of freehold, and the representatives elected in such a miniature colony are personally known to all voters and are chosen as much by wives as husbands. A Bermuda Women's Suffrage Society, formed in 1923, sent in 1930 a memorial to the Secretary of State for the Colonies advocating political sex equality. The leaders of this Society are for the most part women intellectually, no doubt, quite fitted to register votes intelligently. Within the Island they have been, and still are, in a hopeless minority. Like the pre-War suffragettes in England they have tried to obtain what they want by refusing to pay taxes and protesting in similar ways. The majority of the present electorate in Bermuda is definitely opposed to women's suffrage. Bermuda is at present governed by a House of Assembly the representatives to which are elected by residents guaranteed to have an interest in the economic welfare of the colony to the extent at any rate of holding £60 in land assessable to taxation at that value. The extension of the franchise would mean that in course of time nominees of real property companies would get elected, and by passing laws of which the Legislature has hitherto carefully avoided the consideration, make it possible for the Island to be bought, lock, stock, and barrel, by real property speculators. If the enfranchisement were extended only to white women, it would create immediately a sense of irritation and injustice among the coloured population, who, more than white folk, are keen on maintaining man's political supremacy. If it went to the limit

¹ It is exceedingly difficult to enumerate the permanent population satisfactorily, as, besides the troops belonging to the garrison who may be moved at any time, some 90,000 tourist visitors come and go in the course of the year.

of universal adult suffrage, including the coloured population as well as white, the present Bermudian official view is that either :

(a) The white population, though in a minority, would be kept in power by force or fraud such as exists in the Southern States of America, and to some extent in South Africa ; or

(b) The change would mean in course of time the practical abandonment of the Island by the white race, either as a result of extermination or fear of extermination by the coloured, or of economic conditions as in Hayti, San Domingo, and some of the British Islands of the West Indies, where political power having got into the hands of the black population, hopeless financial mismanagement has followed.

Having failed to make any headway by petitioning members of the Legislative Council of Bermuda and having failed to get active support from any considerable number of women voters in the Island, the leaders of the Bermuda Women's Suffrage Society came to London in the spring of 1931, and as a consequence of their representations, the then Colonial Secretary, Lord Passfield, in April 1931 wrote to the Governor, expressing surprise at the out-of-date franchise conditions which have in fact remained unaltered for nearly a century. He recognized that the last word must rest with the Bermuda Legislature, but recommended a general extension of the franchise.

His letter was read in May 1931 in the Bermudian House of Assembly and listened to with respect, but silence. Constitutionally it is not within the powers of the Colonial Secretary, in spite of the democratic principles to which he is pledged, to interfere with the franchise qualifications of a colony having responsible government. He may give the women delegates of the Bermuda Women's Franchise Association his blessing, but nothing more. He has no power to appoint a commission of inquiry into the Bermuda franchise, unless the Bermuda Legislature agree to pay the cost, which they refuse to do. Whatever private views a Colonial Secretary may hold, he must recognize—as did Lord Passfield—that the Bermuda franchise is something exclusively within the purview of the Bermudian legislature.