Early West Indian Government

Showing the Progress of Government in Barbados, Jamaica and the Leeward Islands, 1660–1783

by

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PREFACE

Some years ago I wished to write the story of the decline of West Indian constitutions in the nineteenth century. In order to do this I had to start with a clear and reliable picture of what they had declined *from*, i.e. what they had been in their prime in the late eighteenth century. I sought information widely from both people and books, but, incredible as it may seem, could find no source of full and exact information. American investigators had worked out the story so far as the ex-mainland colonies were concerned, but so far as the West Indies were concerned published material was extremely patchy. It was generally understood that constitutional practices within all the older West Indian colonies had by the end of the eighteenth century become widely divorced from the spirit and letter of the original Restoration pattern as enshrined in the royal Commissions and Instructions issued to each governor. But to what extent, and in what detail? And too, by what steps? Practically no clear information was available.

Accordingly, I have had to look the facts out for myself, and this book is the result. The investigation has proved surprisingly long and involved for I have had to go back to the origins of our colonial system, examine the constitutional position enjoyed by governors and their councils in the seventeenth century, and trace the ways by which these powers came to be reduced and even eclipsed by the popular Assemblies as the years rolled by. The greatest changes occurred in the field of executive government, and I have deliberately devoted the bulk of my attention to this sphere. I disregard the Bahamas and Bermuda not only because space does not permit their inclusion, but because their story is already better known than that of their sister islands. Even as it is, to cover so wide a field within the compass of a single book has compelled a drastic selection of material. The study has been terminated in 1783 because by then the movement towards formalisation and reduction of the governors' powers had become as complete as it was ever going to be.

This story of early colonial development is of more than just historical importance. As a study of colonial government it is of present-day significance and many a student of representative institutions as they are still to be met with today throughout many parts of the British Commonwealth will find it of interest.

Perhaps in the fullness of time somebody else will take up the story where the present writer leaves it off in 1783, and will describe in detail the great constitutional decline of the West Indian islands in the nineteenth century; and so complete the background against which the present-day constitutional renaissance within these islands needs to be set in order to be fully understood. May the present study be found of use when the time comes to begin such a task.

Before closing I should like to express my indebtedness to many who have helped to make the research possible: to the encouragement given me by the late Professor A. P. Newton, of King's College, London; to the Librarian and assistants of the Institute of Historical Research of the University of London; to the Directors and staffs of the British Museum and the Public Record Office; the Librarian and staff of the Royal Empire Society; and last, but not least, to my wife, whose patience I have often sorely tried, but who has encouraged and helped me to the end.

F. G. SPURDLE.

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Chapter I

THE GROWTH OF ORGANISED GOVERNMENT, 1625-1664

§1. The Rise of Assemblies in Barbados and the Leeward Islands

The first permanent English settlement in the West Indies was made early in the year 1624, when a small band of adventurers under the leadership of Thomas Warner, a Suffolk gentleman, landed upon the little island of St. Christopher, with the intention of making it their home. They had been sent out by a small syndicate of London merchants, of whom Warner and another, Ralph Merrifield, were the chief promoters. They had been in possession of the island scarcely above twelve months, when a crew of privateering Frenchmen under Pierre d'Esnambuc put in to refit. These newcomers became so attracted by the possibilities of settlement that they too, with Warner's permission, established themselves. Both sections of the island community so increased in numbers that in 1627 by common consent a partition was effected, the English retaining the central portion of the island, while the French agreed to confine themselves to its northern and southern extremities.[1]

Having made his settlement without any authority from the English Crown, Warner was no sooner confident of success than he took steps to regularise his position. This necessitated his return to England in the summer of 1625. On account of his humble birth he could not hope himself to secure the proprietorship of the islands, though he did secure quite early from Charles I a commission appointing him Lieutenant—or as we should say, Governor—over the islands of St. Christopher, Nevis, Barbados, and Montserrat, as well as all others of the Caribee Islands not claimed by any foreign power.[2] The question of the proprietorship required considerably longer negotiation. Warner managed to interest Lord Treasurer Marlborough in his claims, and the latter afterwards transferred his whole interest to James, first Earl of Carlisle, who in July, 1627, was finally granted letters patent over the whole of the Caribee Islands, from 10° to 20° north latitude; a wide range which made express mention of Grenada, St. Vincent, St. Lucia, Barbados, Dominica,

Guadaloupe, Montserrat, Antigua, Nevis, and St. Christopher, as well as smaller islands.[3]

The inclusion of Barbados within this grant wrought a great injustice to Sir William Courteen, who only a few months earlier (17 Feb., 1627) had planted a settlement there. He at once contested the grant, and brought forward evidence to prove his own prior right to the island. Despite this, however, the influence of the more powerful courtier prevailed, and by a decision given by Lord Keeper Coventry in April, 1629, Carlisle was confirmed in his possession.[4] Meanwhile the dispute had seriously discouraged emigration to the colony, prospective settlers being unwilling to risk the purchase of land while the proprietary claims remained in such confusion. But Coventry's judgment at once cleared the way for renewed settlement, and both St. Christopher and Barbados flourished so rapidly, that by the early forties the English population of each was probably in the neighbourhood of 30,000. The surplus from these two parent colonies spread outward into several of the surrounding islands. Nevis was settled in 1628 by a small group of people under the leadership of Anthony Hilton, an ex-planter from St. Christopher, and seems to have thrived comparatively well. Antigua and Montserrat on the other hand, being more remote, were not regarded as so favourable to cultivation: consequently attempts were not made to plant them until the middle thirties. Both, however, by 1636 were in the throes of early settlement, though the slowness with which they developed stands in marked contrast to the progress of the more fortunate islands. Twenty years later, when prosperous Barbados had well over 30,000 white inhabitants, Antigua, her equal in size, had not more than 1,200.

Proprietary and governmental rights over all these islands resided in the Earl of Carlisle, but the terms of constitutional import within his patent were not at all precise. For the better regulation of his people he was empowered to make laws, which were to be issued only "with the consent and approbation of the freeholders". But this safeguarding of popular liberty was virtually nullified by the insertion of a further clause, empowering him upon emergencies to ordain laws without that consent. Since no attempt was made to define what should constitute such emergencies, the provision in effect gave the Earl unbridled legislative authority. A still later clause gave him unlimited power to tax and exact rents from his people,[5] while he was, of course, given sole appointive authority. He could dispense government either in person or by deputies, and was given power to execute justice in all causes whatsoever, to remit

offences, and grant pardons. He was given full authority to organise the military defence of his possessions, and to make free use of martial law in any time of tumult or invasion. These terms may all be reduced to the one comprehensive statement, that all legislative, executive, taxative, judicial, and military authority centred in the Proprietor, who was permitted to exercise it through deputies. Lip-service was paid to one or two principles of constitutional freedom, which were, however, so devoid of machinery for making them effective as to be of no practical use.

The patent in no place specified the form of governmental institutions which should be set up for the internal regulation of each colony. This was left to the sole discretion of the Earl himself. If he chose, he might by virtue of his powers exercise almost despotic sway, or he might on the other hand govern wisely and well, establishing local institutions and endowing them with constitutional liberties, which, though detracting from his own personal authority, would nevertheless contribute to the happiness of his subjects. Since he did not reside within his government, he found it necessary to wield his authority through the separate governors whom he appointed to each island. To each of these he granted the same powers which the Crown had granted to him, subject only to the condition that they must submit all important matters to him for confirmation, and pay heed to all instructions that he should send them.[6] In theory, therefore, each governor was a person of only subordinate authority, owing his very position to the Proprietor, and having his every decision subject to the latter's instructions and review, but in practice he was of far greater consequence. His distance from his master enabled him to commit many an act, destructive of the interests either of the people or of the Proprietor, the results of which were beyond a remedy by the time the superior power of the Proprietor could intervene.[7]

The commissions issued by Carlisle to his governors were as devoid of institutional definition as was his own patent. That granted to Warner in 1629 for the governorship of St. Christopher left all power to the Governor, not even specifying the need for a council of advisers. He was given a mere general authority "to do all . . . things . . . for the advancement and establishing the public good of the said plantation . . . according to the laws and laudable customs of England". Perhaps it was by virtue of an authority such as this that the first Councils were established—or it may be that the Governors along with their commissions received instructions, now unknown to us, which ordained the setting up of these bodies. In any

case, be the authority what it may, Councils were constituted very early both in Barbados and St. Christopher. They were chosen by the Governors, who naturally enough confined their selection to men upon whom they could depend for support. Carlisle's first Governor of Barbados, Charles Wolverston, upon his arrival nominated a Council of twenty to be his assistants, while we know that by 1630 Warner in St. Christopher had set up a Council of ten members. Nevis, too, under Anthony Hilton, was in possession of a Council as early as 1629, her second year of occupation.[8] In all three islands the local Councils enjoyed an unbroken existence from that time onwards.

Throughout the next ten to twenty years the Governors and Councils held supreme command. Councillors remained subservient to the Governor who appointed them, but their participation in his acts lent a less arbitary guise to the administration. All legislative, executive, and judicial power was concentrated in their hands. By them all regulations were framed and issued, from them all administrative acts proceeded, and before them all criminals and other lawless characters were arraigned for trial and sentence. A spirit of arbitrariness pervaded all their doings. A summary harshness marked the trials which were heard before them, the punishments extending even to whipping, branding, and death. Popular liberties were practically non-existent, and life itself was cheap to those who dared protest.[9] All the evidence available points to the oppressiveness which characterised the island administrations so long as they remained untempered by the inclusion of any popularly elected element.

Prior to the development of Assemblies, the Governors and Councils possessed unlimited powers of taxation, which they did not hesitate arbitrarily to exercise. In Barbados, for example, Henry Hawley in 1634 demanded a poll tax of 40 lb of cotton or tobacco per head—20 for the use of the Proprietor, and 20 for his own purse. He pretended that it was to be used in making fortifications within the island, but it was never so expended, though it was continued annually down to the year 1641, when it was exacted by Governor Huncks for the last time. In St. Christopher Sir Thomas Warner with the consent of his Council levied a similar tax of 20 lb of tobacco per head for the Earl of Carlisle, and 20 lb for himself, in addition to a further quantity for the maintenance of a minister and a small party of guards. This was continued for certain down to the year 1646, and probably on till 1649, the year of Warner's death. The taxes so demanded were collected as summarily

as they were levied. As soon as the time arrived for the crops to be gathered in, the Provost Marshal in each island demanded the amount of duty, and in default of payment had power to distrain upon the goods of the defaulters for its satisfaction. Until the taxes were paid no person was allowed to dispose of his crop.[10]

Participation by the people at large in the government of the islands was almost unknown before the establishment of the Barbadian Assembly in 1639. We know that upon isolated occasions mass meetings of all planters upon an island were convened by the local governor, where business of extraordinary importance made such a step desirable. Such primary assemblies were, however, of practically no constitutional significance. The story of Henry Hawley's convocation of the first representative Assembly in Barbados is too well known to require description. It should be noted, however, that for the first two years the House was a mere advisory body, and that not until the advent of Governor Bell in 1641 was it given a right to initiate legislation. In the other islands we hear of an Antiguan Assembly in 1644, and one in St. Christopher three years afterwards.[11] Montserrat, however, was more backward. It is fairly certain that even by 1654 there was still no popular element in the government of that island, for we read that one Samuel Waad, a brother-in-law to Governor Roger Osborne, was by the latter ordered to be shot, because he in a public gathering "did solicit the governor . . . that they might be regulated by due course of law as other of the islands were, which was to be by common Council and Assembly".[12] The fact that Osborne was still at his post in 1660, would tend to indicate that Montserrat did not achieve popular government until the Restoration.[13] Concerning the Nevis Assembly our knowledge is almost blank, save that we know such a body was in existence by 1658.[14] When it began its life we do not know, but probably it was in being at the beginning of the Protectorate period.

The growth of popular representation within the separate governments quite destroyed the institutional uniformity which up to that time had existed. Thenceforth each individual island continued its political progress at a rate different from the rest; some like Barbados and Antigua hastened rapidly towards radicalism, while others like Montserrat, Nevis, and St. Christopher apparently made only slow advance in the vindication of popular rights and liberties. For purposes of convenience, therefore, let us alter our method of treatment, and relinquish our attempt at uniform description, in favour of a more particular account—as far as we have evidence to show it—of the political development of each island.

§2. Representative Government in Barbados, 1640-1660.

Hawley's "Parliament" in Barbados consisted of eleven councillors and twenty-two "chosen burgesses".[15] The number of Assemblymen was never altered, and when in the time of Governor Bell the number of parishes was finally fixed at eleven, a representation of two delegates from each division made up the full composition of the House. The Council, on the other hand, varied considerably from time to time, a record of 1641 giving the names of thirteen members and the Secretary,[16] while we know that the Board established by virtue of commissions from the Commonwealth authorities was fixed at six.[17] Throughout the whole period of Daniel Searle's governorship it was kept scrupulously at that figure.

Of the relationships which obtained between the Governor, the Council, and the Assembly, our knowledge is meagre, but we can piece it together in a few particulars. When in 1642 the political combatants in England resorted to arms, both sides strove to win the support of the Colonies. Barbados, though royalist in sympathy, for the first few years definitely fore-bore giving allegiance to either side, resolutely refusing to be made a party to the central dispute. Proprietor, Crown, and Parliament alike had their authority disregarded, and the island for the rest of the decade pursued a course of virtual independence. To accomplish this Governor Bell had to unite all branches of the legislature in his support—to give all a stake in the administration. Complete self-government was established. Bell personally selected all his Councillors, but it is clear that he followed their advice so slavishly that before long they usurped a position of co-equality with him.[18] The Assembly, which was frequently in session, was much consulted in all matters of importance, and bore an active share in the government of the island. The whole community was practically unanimous in the stand which had been taken, and harmony between all branches of the legislature was complete. They were almost one body, unified in their devotion to the common weal, instead of three separate entities, each selfishly intent upon the furtherance of its own interests. Many of the Council had previously sat in the Assembly, and the affinity between the two Houses was very strong indeed. John Bayes, in describing this close attachment, wrote that "the Council and Assembly were so cemented together, as the one could not be dissolved without the break-neck of the other."[19] This affinity certainly continued throughout the period of the Walrond ascendancy, when the representatives were permitted

to share in many functions which rightfully belonged to the Executive. We find them joining in the appointment of commissioners of defence for the various parishes, and of judges to act as arbitrators in cases of dispute between merchant and planter. These are the first instances now traceable of appointments being made directly by legislative Act, a form of appointment which invested the Assembly with a distinct share in the selective process.[20]

With the arrival of Lord Willoughby in 1650, we might well expect some reduction in the Assembly's growing powers. His commission from the second Earl of Carlisle gave him plenary powers in all things, extending even to matters of legislation and taxation. The forward state of the island prevented his taking full advantage of these, but the Assembly in granting him a permanent revenue of 4 per cent. on all goods exported by merchants and 2 per cent. on all exported by planters,[21] did yield to him a financial independence which might have been of very great use to him in pruning their powers, had time only permitted him to make the attempt. It seems probable that he did deny their right to share in the making of appointments, a contemporary description of the island recording the fact that "My Lord creates all officers."[22] We have no evidence, however, that he was able to effect much in the reduction of the Assembly's powers, the approaching forces of Parliament under Sir George Ayscue making it absolutely essential that political harmony be preserved at all costs. In any case the problem of repelling the invader probably drove all else from the minds of the inhabitants, Willoughby included.

The capitulation to the Parliamentary forces made no difference to the internal system of island government. The Governor continued to be appointed from England, the Council to be chosen by him, and the Assembly to be elected two from each parish by the resident freeholders. Since no law yet specified a definite term for the Assembly's continuance, that body remained in being just so long as the Governor thought fit to retain it. The Council of State in England formally commissioned Sir George Ayscue to assume command of the island, and to choose a Council of six "rightly qualified" persons to act as his assistants.[23] Apparently they took it for granted that the Governor and his Council would as a matter of course control all policy and wield all executive authority; consequently no clauses were inserted within Ayscue's commission to specify the particular powers which he should wield. This was a distinct weakness, which was destined to cause serious inconvenience. Ayscue obeyed orders, and for a short time himself did hold the

reins of government, constituting as his six Councillors, Daniel Searle, Henry Hawley, Thomas Modyford, James Drax, John Burch, and Richard Hawkins. The first of these was his own Lieutenant, who had been second in command of the Parliamentary forces, while the other five were all planters thought to be favourable to the Parliamentary cause. When the time came for Ayscue to leave the island, he appointed Searle to be Governor in his stead. This was quite in accord with the wishes of the English authorities, and the powers of the new Governor were intended from the first to be identical with those of his predecessor. The island Councillors, however, readily saw an excellent opportunity to reap political advantage out of the situation. They claimed to have been appointed on just as good authority as Searle himself, and denied that he had any power to remove them. They further insisted that in all Council decisions he possessed no vote superior to their own, and asserted that he was a mere Councillor like themselves, his position being that of one *primus inter pares*. So strenuously did they deny his right of veto, that he was constrained to hold it in abeyance pending an appeal to England upon the question. Searle's position was made as unpleasant as possible, the islanders being determined to make the most of his confusion. Among people of so royalist a temper the recent surrender to Parliament had been a deep humiliation. Defeat had changed royalist zeal to imperial indifference. If they could no longer actively oppose the English Parliament, they could at least reduce to a minimum any association that existed between the two countries, and so preserve for Barbados that virtual independence which had already marked its position under the early governorship of Philip Bell. Public opinion zealously supported the creation of such an independence, unfettered by restrictions from England, yet subject to the protective assistance of the parent state in time of need. As Searle himself put it, they aimed "to remain under England's protection, but not to own England's jurisdiction".[24] The whole atmosphere of public life was pervaded by this narrow spirit. Its supporters were predominant in both Council and Assembly. The Governor, they said, was too king-like, and many argued that he should be elected by the inhabitants themselves, just as the mayors of corporations were in England. Others, including even the Councillors themselves,[25] challenged the method of the Council's appointment, and vainly suggested that the latter should be elected by the freeholders just as the Assembly was.

The same strivings towards self-government early found fault with the Governor's prerogative powers. The islanders insisted that

he should exercise no authority but that which the laws of the island expressly gave him, and that, too, only in the manner which the laws themselves prescribed. They challenged his independent right, as Bayes said, "to judge of any small matter, or issue out his warrant upon any urgent occasion".[26] They aimed at nothing less than the complete Rule of Law, and Barbadian law at that. No power which the Governor enjoyed solely upon the authority of his commission was safe from legislative interference, or even complete abolition. An excellent illustration is to be seen in the Assembly's alteration of the whole Chancery system. From the earliest times the Governor and Council, acting upon their commission from the Proprietor, had sat as a court to hear appeals and matters in equity, all of which had hitherto been well conducted to the satisfaction of the inhabitants. Indeed, so voluminous had become the amount of Chancery business, that the Assembly in 1652 raised the cry that it was taking up too great a proportion of the Council's time, and on that score they framed and passed a measure which withdrew all Chancery jurisdiction from the Governor and Council, and placed it instead within the hands of the ordinary divisional courts. Searle opposed the bill, but was outvoted by a majority of his colleagues who favoured the change, so it was effected despite his disapproval.[27] Throughout the concluding months of 1652 a whole crowd of laws was enacted, many of which struck at the discretionary powers of the Governor, and were forced through contrary to his wishes. Fortunately we still retain a record of these Acts. The year was a very busy one in the realm of local legislation. The political transformation brought about by the capitulation to the English Parliament necessitated the re-enactment of nearly all the existing laws in order to bring them into harmony with the new authority. The opportunity was taken to make a revision of the whole island code, many old laws being completely restated and many new ones passed. These Acts were listed by John Jennings, Clerk to the Assembly, and published in 1654.[28] An examination of these reveals the fact that no fewer than ninety measures were passed during the years 1652-3, dealing with a wide variety of subjects, many of them making serious changes in the judicial and other administration. Some of them altered courts and court procedure. Many set scales of fees to be taken by the various public officers, and ordained that security be given by them for the honest performance of their duties. Others prescribed the terms upon which men should serve in the Militia, or the Horse, or hold military commissions; while a few concerned the regulation of trade. All these things had come to be regarded—

many of them for the first time—as matters proper for legislative regulation. The extent to which they whittled away powers left previously to the Governor's unrestricted discretion, may be gauged from Bayes' report that "by their several votings [they] have so eclipsed the Governor's power, that at present he signifies little only his title, having not the fifth part of that power which all former governors have had."[29]

But the Governor still retained one power of which the popular party were justifiably jealous, and which they were correspondingly anxious to restrict. He could convoke, prorogue, and dissolve the Assembly at will, and, so long as he could carry on without their financial support, he could refrain even from giving them a meeting. Searle's Assembly now tried to strengthen their position by making themselves financially indispensable to him—even to the control of his salary itself. For the private support of their governors previous Houses had granted certain taxes for the whole period of their office. Governor Bell had been granted one pound of tobacco per acre, while Lord Willoughby had received the 4 and 2 per cent.[30] Searle's Assembly now altered the whole system. They commenced the practice of raising taxes for only small periods,[31] thereby making the Governor's salary conditional upon their own regular continuation. It would also appear by this time that they had vindicated their claim to be the sole originators of tax bills.[32] But these practical safeguards failed to satisfy them. They wanted nothing less than an absolute legislative guarantee of their right to perpetual existence. Accordingly throughout the late summer of 1653 they brought all possible pressure to bear upon the Governor to induce him to consent to an Act providing for the election of a fresh Assembly every year, the new one to meet before the old one had disbanded.

Searle vehemently opposed such a scheme, and at length succeeded in thwarting their design.[33] His success was due in part to a great change which had been wrought in his position in August, 1653. After considerable delay, the Council of State in England had at last pronounced judgment upon the matter of his position at the Council board. The decision was in his favour, and a fresh commission was in June, 1653 sent out to him. This gave him power to appoint his own Councillors, and so opened up a way by which he was enabled to dismiss the old and summon a totally new body of advisers. The new commission made no mention of the veto power, but we know that thenceforward it was allowed him.[34] The power of the Governor to control his Council as well as their legislative measures, was thus finally and fully established. No longer were they able by a spurious

equality of power to compel his assent to measures which he personally disapproved. In fact the situation in which the Councillors now found themselves was ironical to the last degree.

Temporarily secure in their position at the Council table, they had in the past co-operated with the Assembly to impose restrictions upon the Governor's discretionary powers. They had succeeded, and the free powers of their victim had been seriously curtailed. They did not foresee that in setting legislative channels to the exercise of the Governor's authority, they were setting identical channels to the exercise of their own. In bridling the Governor they equally bridled themselves. With the arrival of the commission of 1653, their discomfiture was well and truly brought home to them. They were now a subordinate body of mere assistants to an officer who himself wielded little independent authority, and throughout the remainder of the Protectorate period they never really rose from that position of subordination. They paid a heavy price therefore for their former willingness to sacrifice the prerogatives of their own position to the pressure of popular demand.

But if the Council had profited nothing as a result of the limitations set upon the Governor's authority, the country as a whole had certainly made most material gains. So greatly had the discretionary portions of the prerogative been whittled down by the enactment of legal conditions for their exercise, that the Rule of Law was established as a very prominent feature of local life. This willingness to respect only locally established law, with the corresponding tendency to ignore any authority of more arbitrary origin, attracted the attention of numerous observers several of whom have fortunately left us a record of their observations. Francis Willoughby in his second period of office early remarked to Charles II upon the people's disposition to believe "that they were not to be governed by your Majesty's commission, nor anything but their own laws".[35] This spirit never subsided: it was strengthened rather than diminished by Willoughby's opposition, and triumphed again under the administrations of his successors. The Triumvirate of Henry Willoughby, Hawley, and Barwick succeeded in procuring supplies from the Assembly only at the price of a definite promise that "the inhabitants . . . should be governed according to the laws of England and the constitutions and laws of this place, and not otherways."[36] Atkins, too, paid tribute to the self-same phenomenon when in 1677 he wrote that "without a law . . . confirmed [by the Governor and Council] they will do nothing", and stated further that the islanders looked upon this as "their primary right by which they held all they had".[37]

The Assembly, too, had gained as a result of that early struggle. It had proved its ability, in the interests of the people, to change by legislation the most long-standing institutions, to curtail the very oldest authorities. It had failed, it is true, to force the passage of its own perpetuation bill, but it had made advances in most other directions. It had manifested a tendency to make appointments by means of legislative Acts, and so to continue an interference in what was more properly an executive function.[38] It had succeeded in grasping a share in the Treasurer's appointment. Whether or not it had enjoyed this during the time of Governor Bell, we cannot tell. It is clear, however, that when Ayscue was in the island he insisted that the appointment be retained within the Governor's hands.[39] But scarcely twelve months afterwards the Assembly under Searle assumed a right to participate in the selection not only of the Treasurer, but of the Excise Clerk as well.[40] It thus made these officials partly responsible to itself for the honest performance of their duties, and there is no reason to suppose that it ever lost this power during the remainder of the Protectorate period.

But it was not only in the appointment of the Treasury officials that the representatives encroached upon the field of actual financial administration. Their influence went much further than that. Early in the decade they secured a right to share in the audit of the Treasurer's accounts, so to assure themselves of the honesty of his dealings. This work was generally performed by a joint committee of members from both Houses, who reported to the legislature what stock still remained within the Treasurer's hands.[41] The legislature did not safeguard expenditure by the insertion of appropriation clauses in the tax Acts; it adhered instead to a custom whereby no public money could be spent upon any work or service, until that service had received the approval of both Houses. This, of course, obviated any necessity for appropriation clauses, and is amply confirmed by a statement made by the Council in 1661. "For . . . defraying . . . all public charges of government, forts and the like", they wrote, "we have, by the consent of the Council and Assembly, laid a yearly imposition on wine and strong liquors brought . . . to this island, which if it at any time fall short, we by the common consent of the Council and Assembly raise a levy upon ourselves, which is brought into the hands of the Treasurer, and disposed of by the same consent that raises it."[42]

Once a certain work had been mutually approved, it was generally left to the Governor and Council to see it done. If it were a matter of only trifling importance the Board might simply order the

Treasurer to carry it out. If, on the other hand, it were of a more serious character the Council could either give the authority itself,[43] or else depute a committee of able planters to arrange a contract upon the public's behalf. An instance of this last is to be seen in the Council records of 9th May, 1654, on which day the Board set up a committee comprising William Vassall, Lieut. Colonel Codrington, Edward Collinson, Peter Levi, and Captain Thornborough, to "treat agree and conclude with any person or persons for rebuilding the [Indian] Bridge, . . . Mr William Johnson Treasurer [to make] payment for the charge thereof . . . out of the public Treasury".[44] At other times a joint committee of both Houses might be set up to make a contract, as when on 25th May, 1654, Colonel Lewis Morris and Lieut. Colonel George Stanfast were deputed "forthwith [to] contract with and purchase [from] Colonel Edmund Reade one house standing at the Hole, at such reasonable price as conveniently they can, which is to be paid out of the public Treasury".[45] The claims which resulted from such contracts—being for clearly ascertained amounts—were generally paid from the Treasury upon the Council's own authority. Amounts of a less ascertainable nature, on the other hand, being usually for services of an emergent or incidental sort which had not secured the previous approval of the Assembly, had to pass the scrutiny of the lower House as well as the Council before they could be paid. Evidence of this is seen in the Council Minutes of 3rd October, 1654, which run thus:— "Upon the petition of Richard Wilmott to the Governor, Council and Assembly for some goods due to him as a public debt; and also upon reading the order of the Assembly dated the 26th July, 1654, that the petitioner should prove his account before the Commissioners of Public Debts, and procuring [proving] his accounts to be paid by the Treasurer one third present, and the rest in order and course; it is ordered by the Governor and Council that the Commissioners do forthwith state and audit the account of the said Wilmott, and what shall be proved to be due, that Mr William Johnson Treasurer, do forthwith pay one third, and the other by order and course."[46] Additional evidence of the same process is forthcoming from a record of 3rd July, 1661, when the Council sent down to the Assembly the account of a Mr Hart, with a request that the House "take some speedy course for the payment" of it. The representatives gave it their immediate attention and ordered that Hart deliver his account to the "Committee of the Public Treasury at their next meeting", who were directed to "take a speedy course for satisfaction of what shall be found . . . to be

justly due".[47] Over this more variable section of the public accounts, therefore, the House, either directly or through its representation on the committee of public accounts, certainly possessed a right of scrutiny before payment could be made.

To sum up: the extreme simplicity of the Barbadian administration, and the close personal relationships which existed between the members of its component parts, had tended to break down the barrier between the legislative and executive departments. After all, the very separation of government into divisions is itself only a measure of practical convenience, calculated to render more efficient the control of a large and complex state. Barbados was neither large nor complex. The whole island, the whole administration, and the personal abilities and inclinations of every official within it were well known to every inhabitant. They did not clearly distinguish between those things which ought properly to belong to the Executive and those which appropriately belonged to the legislature. The Assembly, without purposely intending to encroach upon the administrative field, was nevertheless often guilty of doing so; while the Governor and Council, themselves none too clear upon the rightful bounds of their own province, not infrequently tolerated the encroachment, because at the time they did not realise the harm which it wrought to their position.

By the end of the Commonwealth era the measure of the Assembly's advance was clearly distinguishable. In the short twenty years of its existence it had robbed the Governor and Council of all their early independent law-making authority, and had seriously curtailed their discretionary latitude even in the executive field. In addition the House had erected for itself a legitimate power to share not only in all legislation and taxation, but also in the realm of finance, and to a lesser extent in those of public works[48] and appointment. In the remaining fields of administration, however, it had not so seriously encroached. While by law it had regulated the organisation of the militia,[49] it did not seek to usurp the Governor's essential right of declaring martial law, and of appointing all commissioned officers. While by law it had similarly regulated the conduct of the courts and court procedure,[50] it did not challenge the Governor's right to appoint both the judges and the justices of the peace. Its interests lay thus predominantly in the sphere of legislation, taxation, and finance, in which its advances were far more noteworthy than they were in any other quarter.

§3. Representative Government in the Leeward Islands before the Restoration.

Of the relationships existing between the Governors, Councils, and Assemblies of the Leeward Islands during this period our knowledge is almost a complete blank. We know that the Assemblies enjoyed no security of tenure, and were liable to be summoned by the Governors only because the latter desired supplies. With the possible exception of Antigua it does not appear that any of them ever made use of their financial power to create such security. When summoned, they, unlike the Barbadian House, met along with their respective Councils.[51] With nearly all of them we have strong presumptive evidence that they were not yet powerful enough to safeguard the proper rights and liberties of their constituents, let alone to interfere in matters of executive concern. For all the islands we have complaints recorded against the Governors which, if true, would indicate that the discretionary powers possessed by the latter were still comparatively large, and that the Assemblies held only a subordinate place.[52]

To this general rule the island of Antigua was a possible exception. It was peopled largely by people from Barbados, which fact alone suffices to explain the radical temper of its politicians. Its representative Assembly had existed in all probability from the mid-forties. The inhabitants, like their fellows in Barbados, had exhibited an exceedingly royalist temper, which was only subdued by the arrival of the Parliamentary forces, who reconstituted the government with officers of more tried allegiance to the republican order. The new Governor, Christopher Keynell by name, soon encountered great opposition from the local Assembly. The merits of the dispute can no longer be clearly resolved, but it is clear that the Assembly's antagonism, though in part capricious, was nevertheless founded upon solid complaints. They complained of the way in which the Governor's cattle were allowed to wander at liberty over the whole island, thereby destroying the crops of the other planters. They opposed the manner in which the various officials exacted exorbitant fees in the performance of their duties, and yet grossly neglected their responsibilities. They showed further dissatisfaction with the neglect of the Governor and Council to protect the residents from the attacks of Carib raiders; while it is equally clear that they were extremely dissatisfied with the existing administration of the public finances. The more radical section was equally resentful, in a way which reminds us of contemporary Barbadians, of the way in which

the meeting of the Assembly depended upon the capricious summons of the Governor.

Matters came to a head in 1655 when the representatives addressed to Keynell a petition demanding that the Secretary and the Provost Marshal deposit security for the diligent performance of their duties. They further demanded that a committee should be established to appoint places most suitable for the quartering of troops, and to lay in provisions for the same. They asked for the appointment of a second committee to supervise the issue of all money from the treasury, and finally suggested that the Speaker might be empowered to convoke the whole body of the legislature, including even the Councillors, whenever he should think fit. Keynell sharply bade them mind their own business. In July a new Assembly met, and at once determined to push ahead with legislation to effect its desires. The resultant bills all tended to exalt the Assembly's powers at the Governor's expense. The first, significantly enough, sought to alter the financial system. It stipulated that all fines, etc., should be levied in the name of the Protector and paid in to the treasury; that two Treasurers should be annually nominated by the legislature as a whole; and that four commissioners should be selected, two from each House, to meet regularly for the examination of the Treasurer's books, and to authorise all disbursements. A further bill sought to discontinue the existing tax—a permanent one—by which 30 lb of tobacco per head was annually granted to the Governor. Two more provided that the Secretary and Marshal should furnish substantial security for the efficient conduct of their offices, while another strove to make sweeping changes in the judicial system. Hitherto all litigants had had to repair to a central court at Fort Ayscue to have their suits judged, a procedure which had occasioned great delays. The Assembly now sought to apply a remedy by the establishment of four divisional courts, each composed of one judge and two assistants nominated by the whole legislature. Appeal was still left, however, to the Governor and Council as a Court of Appeal. Finally, and from a constitutional point of view perhaps the most important measure of all, was one entitled an *Act for the convening the deputies of the several divisions*, which sought to make it lawful, after the Governor's first convocation of a new Assembly, for the Speaker to continue all subsequent sittings when and where he might think convenient.[53] He was to be permitted to continue these sittings for two or three months if the majority of deputies so desired, therein to prepare bills which would later be presented to the Governor and Council for their approbation or rejection.

For some days the Governor and Council were half inclined to assent to these proposals, but divisions of opinion later broke out among them, culminating in Keynell's downright refusal to pass any of them. He straightway prorogued the legislature in order to give passions time to abate. Some of the Council, siding with the representatives, prayed him to re-summon the Assembly and pass some of the measures proposed. He refused, and secretly decided to take himself off to England, there to lay his troubles before Cromwell. The Council forbade him to leave the island, but he, taking the decision into his own hands, took ship to Nevis, en route for England, leaving one Major Carden as his deputy. A day or two later three of the four resident Councillors met in conference with thirteen out of the sixteen Assemblymen to discuss the situation caused by Keynell's departure. The assembled gathering refused to recognise the authority by which Carden acted. They denied that Keynell had possessed any authority under his commission either to leave the government or to appoint a successor, insisting that at the time of the island's capitulation in 1652, Ayscue had intimated that in the departure or death of the Governor, the Council and Assembly should share between them the governmental power, until the arrival of fresh instructions from England. They therefore resolved that this power now resided in the Council and Assembly combined, and called upon all colonists to observe the laws published by their authority, and to submit to all officers whom they appointed. All such appointments were to be signed by not less than three Councillors and seven Assemblymen.

Carden saw that no time was to be lost. Sending post-haste after Keynell he managed to intercept him before he got beyond Nevis. The news of these latest occurrences brought the Governor back immediately. Upon his arrival he dissolved the Assembly and imprisoned several of the leading malcontents. He then compelled the island to disavow the acts of its representatives and to recognise Carden's authority. Having thus suppressed the opposition he once more left the island.[54] We find him in England in 1656 laying his case before the Protector, from whom he solicited a new commission granting him wide authority, including full executive jurisdiction, and even a personal power if necessary to tax the islanders for defraying the costs of his administration.[55] Just to what extent he was able to carry these into effect we have now no means of telling, but it is extremely unlikely that he ever succeeded in taxing the islanders without their own consent. Moreover, the fact that early in the Restoration[56] the islanders succeeded in modelling the financial

administration upon lines very similar indeed to the plan put forward in 1655, is an indication that Keynell and his successors gradually allowed to the Assembly one or two of the powers for which it struggled.

The similarity between the Barbadian financial system and that proposed by the Antiguans in 1655 is striking. The Barbadian House enjoyed a joint share in the nomination of the Treasurer; the Antiguan Assembly claimed the same. A committee of the Barbadian House shared in the audit of the Treasurer's accounts, and in some cases judged the merits of claims for payment out of the public funds: the Antiguans strove for an almost identical power. Moreover, the committee system of public defence attempted by the latter in 1655 was not at all dissimilar to the commissioners of defence set up in Barbados during the ascendancy of the Walronds in 1650. These early Antiguan practices, though somewhat rudimentary in character, exercised considerable influence on Leeward Island development in days to come, as later chapters will show.

§ 4. The English in Jamaica, 1655-1664.

Jamaica fell into the hands of the English in 1655 in consequence of Cromwell's Western Design against Spain. Fortunately for us the Spaniards, despite long occupation of the island,[57] had failed to settle it effectively and could raise scarcely five hundred fighting men for its defence. Open resistance being thus of no avail, the majority of Spaniards with their slaves retired to the forests and mountains, where for five years they kept up a harassing resistance, ambushing parties of soldiers and hunters and attacking our outposts.

Meanwhile fever and pestilence struck right and left among our troops, taking even greater toll than the Spaniard. Had the King of Spain cared enough for Jamaica to put forth a serious effort to retake it, he must have succeeded; but fortunately he showed no such inclination, with the result that the guerillas at last lost heart and moved to one or another of the neighbouring Spanish possessions, leaving us in undisputed control.

Cromwell strongly desired to retain the island and lost no time in trying to promote its settlement. The soldiers themselves were encouraged by free grants of land to remain, and attempts were made to attract settlers from the other West Indian colonies, from North America, and from Great Britain itself. Fourteen hundred

settlers transferred from Nevis and some five hundred from Barbados, and finally a fluctuating stream set in from England, Scotland and Ireland. Thus, despite the ravages of disease, the population slowly increased until by 1660 it numbered between 3000 and 4000 people. The early English plantations, like the Spanish before them, were almost entirely in the south east corner of the island from Morant westwards to Macario Bay. The chief town was Port Royal, the headquarters of many buccaneers, a thriving place of between six and seven hundred inhabitants: next in importance came Spanish Town with scarcely three hundred.

The military commander on the island was also Governor. In 1660 this post was held by Edward Doyley, an officer of the original expedition of 1655, who had either outlived or outstayed all his former superiors. He had been in command since 1657 and by his energy and ability had been fairly successful in maintaining order and promoting settlement despite the political uncertainty of the times.

Upon the Stuart Restoration peace was made with Spain and Jamaica retained. Early in 1661 Charles II continued Doyley in the governorship pending the making of more permanent arrangements for the management of the island. Military government, however, was to give place to civil, and for this purpose an elected Council of twelve members[58] was established to advise and assist Doyley in his task.

This arrangement was comparatively shortlived, however, for within a few short months Lord Windsor was appointed Governor with power to nominate his own Council and to summon an Assembly of elected freeholders. Doyley was too much a soldier to feel much enthusiasm for the institution of civil government and, beyond swearing in the councillors as justices of the peace and establishing courts of law at Morant, Port Royal and Spanish Town, he did little to alter the shape of things. Full civil government had to await the arrival of Windsor, who landed in mid-August, 1662.

Under Windsor and his deputy, Sir Charles Littleton, considerable progress was made in the new direction, though it was not till October, 1663, that writs were issued for the election of the promised Assembly. This consisted of twenty members, elected from the various settled districts in proportion to their populations. Port Royal returned three members, Spanish Town two, and Morant, the North Side, Seven Plantations, and some other sparsely settled districts one each. The Assembly held its inaugural meeting on 20th January, 1664, and sat until February 12th when it was prorogued, but met again for a short time in May. One of its first

measures was an Act validating various ordinances issued by the Governor and Council in times past, and repealing certain others, especially two tax ordinances. The House then proceeded to bring in and pass five money bills, for it was determined not only to raise enough taxes to support the new administrative system in every way it desired, but also to establish its own pre-eminence in the matter of supply.

The representatives were much afraid that, as Jamaica was a colony of conquest, the King might seek to impose arbitrary taxation; hence they hastened to declare the illegality of any "further or other tax or levy or assessment . . . imposed or levied upon the island or inhabitants thereof, without the assent of the Governor, Council and Assembly".[59] At the same time they hastened, as has been said, to supply the financial needs of the colony as amply as they could by means of an impost on imported liquors, a poll-tax on all persons over twelve years of age, a tax on all uncultivated lands, and the imposition of a licence fee upon all retailers of strong liquor.[60] Next they determined to keep a very tight control over the actual expenditure of the moneys so received. This they sought to do by giving their House an equal share with the Governor and Council in the selection of the two public treasurers into whose hands the tax proceeds were to be paid, and by ordaining that the money was to be issued only with the "consent of the Governor, Council *and Assembly*".[61]

In framing these Acts of January, 1664, the Jamaican Assembly was not following English usage, for the House of Commons had not yet begun the practice of appropriating supply and examining the royal accounts, nor did it presume to interfere in the appointment of tax officials. Rather were the Jamaican representatives following the Interregnum example of other plantations such as Barbados and Virginia, where wide separation from England—coupled with the breakdown of the royal connection—had engendered the feeling that government was more a matter of local concern than of the King's, and the appointment of tax officials more the prerogative of the people than of the Governor.

In May, 1664, Deputy Governor Littleton left Jamaica for England and a month later Sir Thomas Modyford, the new Governor, arrived. Modyford was a man of wide experience, one-time English royalist turned Barbadian planter and finally Governor of that island for a brief time. He was astute, clear-headed and high-handed yet, despite this, his West Indian background made him popular among the Jamaicans. He summoned a new Assembly to meet in

October. Few of its members had sat in the previous House and in a comparatively short session (Oct., 1664-March, 1665) it declared all the Acts of the latter void on the grounds, among others, that they had not been signed by Littleton. It then re-enacted, though with several important alterations, the revenue Acts of its predecessor, granting the taxes to the King "for the public use of this island," and ordaining that the entire revenue be paid to "the Receiver of His Majesty's public revenue" who was appointed by the Governor.[62] The administration of the revenue was thus restored to the due care of the Governor and Council and the proper officials. In the absence of evidence it is impossible to say what induced the representatives to do this, but two likely reasons spring to mind: first, the known antipathy of this House to the previous one; and second, the firm insistence which the experienced Modyford probably employed. Be this as it may, by this Act the financial administration certainly reverted to the orthodox constitutional pattern of the Restoration period, to which it continued to conform for a considerable time to come. Finally this second Assembly, still under the shadow of uncertainty as to its fate as a colony of conquest, passed a law "declaring the laws of England in force in this island", hoping thereby to stave off arbitrary interference from England and ensure that the constitutional liberties possessed by the older West Indian colonies would be enjoyed by itself.

Chapter II

THE ISLAND LEGISLATURES

§1. Introduction

The Restoration was an age of as much importance in the sphere of colonial constitutional development as it was in every other department of colonial activity. The royal domains were in progress of being enlarged; Jamaica had just recently been acquired, and the King was already preparing to resume possession of the Caribee Islands from their proprietor, the Earl of Kinnoul. Moreover the government of Virginia, as a result of innovations wrought during the Commonwealth, was in urgent need of overhaul. Thus statesmen were faced with the serious problem of providing a suitable constitutional frame for every one of the royal provinces of their day.[1]

This difficulty was somewhat lessened by the fact that in Virginia, Maryland, and the Caribee Isles—the provinces most in favour with British officialdom at the time—there had already grown up from a variety of causes a triple form of constitution which bore an undeniable, though comparatively accidental, resemblance to the English frame. Contemporary lawyers, quick to recognise this broad likeness in point of form, speedily came to invest colonial constitutions with a corresponding similarity in point of function, the Governor representing the King, the Council corresponding to the House of Lords, and the Assembly being the humble counterpart of the House of Commons. Thus in defining anew the governmental forms and relationships which should for the future obtain within each royal province, lawyers and others came to model them in a broad sort of way upon their own interpretation of the English constitution itself.

§2. Island Legislatures Exercised Only Subordinate Jurisdiction.

Colonial legislatures, though resembling the parent body, were in all important respects subordinate to it. Their laws were subject to

disallowance by the Crown if found to conflict with English law or policy. The islands were also subject to imperial legislation, even taxation, whenever an English act specifically included them.[2] The claims of their Assemblies to powers identical with those of the House of Commons were firmly denied, even by the Commons itself,[3] which recognised that the logic of such claims implied an equality of status and an independence of action which neither it nor any other portion of English society in the 17th or 18th century was prepared to allow. Moreover the governors and chief office-holders within the islands were appointed under letters-patent by the Crown itself, showing clearly that the island administrations were considered an integral part of the royal jurisdiction.

Admittedly, the island legislatures were not so subservient to the English government as was the Irish parliament under Poynings' Law[4] for they had unfettered right to make whatever laws they chose, provided these were not repugnant to the laws of England or unduly restrictive of the royal prerogative, but at the same time they were far from being independent.

§ 3. The Council and Assembly.

Governor Sir Thomas Modyford in a despatch to the Council of Trade and Plantations about 1668 described the Jamaican legislature in the following words: "The legislative power", he wrote, "is settled in the Governor as His Majesty's commissioner, in his Majesty's Council as representing the Lords' House, and in the Assembly . . . being a humble model of our High Court of Parliament, each of these respective bodies enjoying a negative as well as an affirmative vote."[5] This description would have applied equally well to all the other West Indian colonies.

The Council in each colony really performed a dual function. In the transaction of administrative business it was an advisory body to the Governor, i.e. an executive council. In law-making sessions, on the other hand, it was a true legislative council, the upper house of the legislature. This was earlier and more clearly to be seen in Barbados and Jamaica than in the Leeward Islands, for in Barbados and Jamaica the Assemblies met separately from the Councils from practically the beginning of their history, whereas in the Leeward Islands most of the Assemblies continued to meet in joint sessions with their Councils until late in the reign of Charles II.[6] Indeed the Montserrat Assembly, the last to separate, did not begin separate meetings until 1696.

At first the business at Council sessions in all islands was all mixed-up, administrative affairs and legislative matters being considered one after the other at one and the same meeting. Gradually, however, these things became more formalised, the Councils beginning to keep executive business and legislative affairs as far as possible to separate sessions. Indeed in Jamaica this distinction became so far advanced that when the Council was in legislative sessions the Governor ceased altogether to attend, allowing the senior Councillor to preside. In the other colonies this exclusion of the Governor was not carried to such a length, but whenever he was present in legislative sessions of Council after about 1725, he was denied any right to vote,[7] the idea being that *his* opportunity to decide on the merits of a bill would rightly arise when it came before him for assent.

As befitted their status, the Councils were naturally invested with a good deal of dignity as well as authority. They had as their clerk and their marshal the deputy secretary and the deputy provost marshal of their respective islands, and they gradually developed their own codes of rules and privileges.

Similarly the Assemblies in the course of time developed well defined forms of their own. Each had its own clerk and its own marshal (or messenger), who were generally its own appointees.[8] Each had the right to choose its own Speaker, draw up its own rules, discipline its own members, judge of their qualifications, and decide all disputed elections. In addition it could inquire into public grievances, summon persons before it, commit for contempt, and even "impeach" high public dignitaries for gross misdemeanours. The privileges of assemblymen included freedom of speech and debate, and extended even to immunity from personal arrest during the entire period of each Assembly and to a limited protection of their chattels from distraint. These rights and privileges were based on the corresponding rights and privileges enjoyed by members of the House of Commons in England. In the same way they were frequently abused by those who possessed them, but were always staunchly insisted on and defended;[9] and were probably no more than was necessary for the dignity and protection of those who chose to run the gauntlet of public affairs in those uncertain times.

§4. The Law-Making Process.

Laws in each colony were customarily enacted by the Governor, Council and Assembly. Having passed each house three times, they

were presented to the Governor for his assent, which was ordinarily given provided they did not infringe the terms of his Commission and Instructions. In the case of ordinary bills it did not matter into which house the measure was first introduced, but money bills had customarily to be introduced first into the Assembly[10] which, in imitation of the House of Commons, claimed the sole right to initiate taxation. Each house had a free right to amend ordinary bills, but at one time or another during the eighteenth century every West Indian Council save that of Montserrat gave up its right to amend money bills,[11] thus leaving to the Assemblies the exclusive management of supply.

Having received the vice-regal assent, the Acts were despatched to England for the scrutiny of the Privy Council and the Board of Trade. This did not necessarily delay their operation because, unless they contained a clause suspending their operation until the will of the English authorities had been made known, they took effect immediately the Governors had assented to them. Such as were found fault with in England were generally rejected by the Crown and went out of operation as soon as the Order-in-Council disallowing them came to hand. A few others, on the other hand, being highly approved in England, were confirmed and allowed to remain permanently in operation—that is, until the local legislatures of their own will and accord chose to repeal them. The majority, however, were neither confirmed nor rejected, but simply allowed to "lie by", thus remaining indefinitely in operation, though liable at any time to disallowance from England or to repeal by the island legislatures themselves.[12]

To this account of how island laws remained in operation, Jamaica is a seeming exception, but the differences in her case are much more apparent than real. In the Crown's long struggle with the Jamaican Assembly for a permanent revenue, the confirmation of the island laws was used as a kind of bargaining card. When in 1681 the Assembly for the first time departed from short-term Acts and granted a revenue for seven years, the chief island laws were confirmed for seven years also. When two years later the House softened sufficiently to grant a 21 years' revenue, the principal laws (including the previous batch) were continued for a similar period. Upon this revenue being extended in 1703 for a further 21 years, the laws were correspondingly continued; and when in 1728 a permanent revenue was granted, they were at last permanently confirmed. Onwards from 1728 each new Jamaican law simply followed the normal course of having to take its chance of confirmation or otherwise in

England. Thus, though the details might differ, the result was practically the same: the cream of Jamaican laws gained permanent confirmation; a great many others, being indifferently regarded in England, were allowed simply to "lie by" and a few, being seriously objected to, were disallowed.

This system, whereby the majority of colonial laws, instead of being definitely confirmed or rejected, were allowed to remain in indefinite operation, satisfied the imperial authorities very well, since, whenever changing conditions rendered a measure inconvenient, the way was clear to disallow it. The result within the colonies, however, was harmful, since it invested legislation with a harmful uncertainty and lent an air of undue sanctity to confirmed laws, which the colonists were naturally reluctant to repeal, lest the new Acts should fail to gain confirmation at Home. Thus many an obsolete old statute was allowed to slumber on in the belief that "a bird in the hand was worth two in the bush". This seems to have been particularly true of Jamaica where the struggle to secure permanent confirmation of their early laws had been so protracted, but it was also noticeable in other islands.

Chapter III

ISLAND EXECUTIVES SURVEYED

§ 1. The Governor

The Governor within a royal province, representing the King, was charged with the preservation of the royal prerogative[1] within his territories, and was given powers sufficient to acquit himself of this responsibility. The prerogative powers of the King in England were quite well known, so it was not difficult for lawyers to attribute all of these to his representative overseas.

The King as chief magistrate within his realm had power to choose for his assistants a body of councillors: the Governor was empowered to choose a similar body. The King had powers alone to convoke, adjourn, prorogue and dissolve Parliament; the Governor was given a corresponding authority over his provincial legislature. The King, as a constituent part of the English legislature, possessed a negative voice in the making of all laws: the Governor received a similar veto. The monarch in English tradition was the fountain of justice, to whom belonged the right both of establishing courts and appointing judges and justices to them: his provincial representative was given a similar right. In the Crown alone lay the right to pardon all who offended against the laws, and this discretionary power was likewise placed in the Governor's hands.

The King was the sole dispenser of office and privilege: in him lay the right to dispose of all offices within the kingdom, and to establish fees for them all. In both these things the Governor was given a similar power within his domains. In England the King was Commander-in-Chief of all the military forces; in him resided the sole right of raising and regulating the army, of appointing military officers, and of building forts and other defences. The Governor in turn was authorised to organise a force of militia, to drill and exercise it, to prepare and publish Articles of War for application in times of insurrection or invasion, and to raise appropriate defences. English law regarded the King as the supreme arbiter of commerce, recognising his right to establish markets and fairs, to set up havens

and ports, and to grant charters of incorporation to such bodies as were thought deserving: each Governor overseas was granted corresponding powers. Lastly, the Crown was the supreme Governor of the Established Church, and in continuation of this ecclesiastical jurisdiction the royal Governor was constituted Ordinary within his province, with power to grant licences of marriage, letters of administration, probate of wills, and to collate to all vacant benefices.[2]

§ 2. The Governor and Council

Moreover, just as the Governor was meant to be the provincial counterpart of the monarch, so the provincial Council was the local equivalent both of the House of Lords and of the Privy Council.[3] But even at the time of drawing up the new constitutions, their framers realised that many a power, which the King might properly wield alone, could not with safety be entrusted to the uncontrolled discretion of his representative overseas. While therefore in theory they granted to the latter truly regal powers, they were careful to limit the freedom with which these should be exercised. From the very first, the consent of the local Council was made necessary to the performance of many of the chief vice-regal functions. Even the earliest Restoration commissions obliged the Governor, in the establishment of courts, the calling of Assemblies, the building of forts, the dividing the province into parishes, the granting of lands to settlers, the publication of Articles of War, the regulation of fees, and the establishing of ports, to act only in accordance with the majority advice and consent of his Council. Subsequent requirements placed still further restrictions upon his freedom of action, until by the closing years of Charles II, the only powers still remaining within a governor's free discretion were those which permitted him to appoint to, or suspend from, all civil, judicial or military offices within his province, and to dominate a fractious legislature by the use of prorogation, dissolution or veto. Towards the end of the seventeenth century, moreover, his hitherto undisputed right of filling all vacant offices was further curtailed by the arrival of an Instruction which necessitated the consent of Council to all future appointments of judges and justices of the peace.[4] During the following century, therefore, the only powers still left within his undisputed grasp were those of prorogation, dissolution, and veto, minor appointment, and suspension.[5]

§3. How Independent were the Councillors?

During the early years of the Restoration, this obligation to act only with the advice and consent of his Council imposed no great hardship upon a governor, for they were all his own personal appointees, and liable at any time to be displaced by him. Consequently he was generally able by threats of dismissal to browbeat them into submission to his schemes. After a little while however, the English authorities, partly to minimise this abuse, and partly because they themselves desired to exercise greater control over the provincial administration, took the appointment into their own hands.[6] To the governor was left only the right to suspend a councillor for contumacious conduct, pending the royal pleasure in the case.

Early in the eighteenth century yet another step was taken towards strengthening the independence of the individual councillor. It was now ordained that in ordinary circumstances no councillor might be suspended unless the majority of his fellow members were consenting to the step. Only upon extraordinary occasions was the Governor permitted to dispense with this condition, and then only when he possessed special reasons, which were to be transmitted to the Board of Trade without delay.[7]

This last proviso certainly offered an avenue of escape, whereby a governor, by pretending the offence to be more serious than it really was, could dispense with the Council's consent, even in ordinary cases. This, however, seldom availed him anything, for the aggrieved councillor, having appealed to and justified himself before the Crown, generally secured an order for his re-admission to the Board, and so resumed his seat to the deep humiliation of his would-be oppressor. The history of the West Indian islands furnishes numberless instances of this, and shows clearly that the English authorities, realising the grave disservice which would result from a toleration of such vice-regal tyranny, jealously safeguarded the independence of the local Boards. The most serious consideration was always given to the case, before they went to the length of confirming a councillor's suspension. On one or two occasions, even when they did support a governor in such an act, they nevertheless censured him severely for any unnecessary arbitrariness he might have shown in giving effect to it.[8] Such reprimands tended to make a governor much more circumspect in the way in which he exercised his suspending power, and made the Council far more independent

of his control than is generally realised, and many a West Indian Governor, like Governor Lyttelton in Jamaica (1762-66), got rather a jolt when he discovered the independence that Councillors were capable of.[9]

§ 4. Selection of Councillors.

For some years after the Crown first assumed the sole right of selecting the members of the local councils, it took no steps to ensure that there should always be ready at hand a list of those most fitted for appointment. As a result the choice of councillors during these early years was a thoroughly haphazard business, any island inhabitant having sufficient influence with the right authorities in England having a good chance of being chosen. Consequently, an island governor was occasionally required to admit to his Council men whose abilities and reputation he personally disapproved. Sir Richard Dutton of Barbados was one of the first to revolt against this slip-shod system of selection; he urged upon the Lords of Trade the desirability of taking the local governor into their confidence whenever council appointments were contemplated. No islander, he urged, should be appointed a councillor until his character had first been ascertained from the governor himself.[10] The soundness of his suggestion appealed to the good sense of the Lords, who proposed in reply that he despatch to them a list of twelve men best fitted from among the planters to fill future vacancies at the council board.[11]

This provision became regularly included within the Instructions given to all subsequent Barbadian and Jamaican governors[12] for a further generation. The same arrangement, though in a modified form, was extended also to the Leeward Islands. There each governor was required to send home from time to time the names of six planters for each island, whom he deemed best qualified for appointment to the local boards as suitable vacancies should arise.[13] For nearly seventy years this system was adhered to without alteration. When, however, in 1752 the Board of Trade temporarily succeeded to a position of independent authority over the colonies, it decided upon a radical change, obliging all governors whenever a Council vacancy occurred, to send home the names of three persons suitable for selection to fill it. This method of recommendation continued throughout the remainder of our period.[14]

As a general rule the Crown, in choosing new councillors for any island, appointed one or other of those recommended by the

Governor. Examples to the contrary were very rare, and perhaps because of that, are worthy of some notice. Planters who were not fortunate enough to secure a place within the list of official nominees might still—if they possessed sufficient influence—make independent overtures direct to the English authorities. In 1686 the Crown directed that Richard Harwood should be admitted to the Barbadian Council. The rest of that Board were scandalised. Harwood was but an overseer, a man of "servile condition, personal inability, and other scandalous circumstances". They persuaded Acting-Governor Edwyn Stede to suspend him from taking his seat until they could make formal protest to the Crown in the affair, and apparently they were successful in securing the cancellation of Harwood's mandamus.[15]

But there is at least one instance of a person being appointed to the Barbadian Council in direct opposition to the desires of the Governor. In 1730 Governor Worsley, hearing that one John Ashley was making efforts to secure appointment to that Board, wrote specially to the Duke of Newcastle in an effort to prevent it. The Privy Council, however, made independent enquiries into Ashley's character, and being satisfied with the result, persisted in choosing him for the place.[16] Moreover a few years afterwards during the governorship of Sir Thomas Robinson, there occurred a further instance of a very similar nature. Robinson's unconstitutional acts of expenditure having aroused the hostility of his Assembly, the latter devised a unique method of attempting to thwart him. Knowing full well that the Governor could not act in direct opposition to his councillors, the House sought—through the influence of its agents in England—to 'pack' the Council with men who sympathised with the popular cause. By canvassing members both of the Board of Trade and of the Privy Council the Island agents sought to secure the appointment only of persons of approved sympathies. It would appear that they were not wholly unsuccessful in their efforts, for John Gibbons, a son of the Assembly Speaker of the day, did receive appointment to the Council directly as a result of this influence.[17] It is important to realise therefore that the choice of councillors through private influence did not completely cease with the establishment of the more regular and official system of vice-regal recommendation.

§ 5. Quorum of Council

From the earliest years of the Restoration it was intended that the Council in each royal colony should consist of twelve members.

Partly through lack of imperial supervision, and partly through exceptional local circumstances, the numbers fluctuated to sometimes more and sometimes less than this figure. In 1697, however, the newly constituted Board of Trade decided to adhere strictly to the limit of twelve,[18] and throughout the succeeding century this seems to have been fairly rigidly maintained.

For some years too, some doubt had prevailed as to the quorum necessary for the conduct of council business. The commission given to Francis Lord Willoughby enjoined him in many matters of weight to act only with the consent of a majority of his Board, but it is certain that he paid little attention to this requirement. That given in 1672 to his brother William gave clearer definition to the provision by requiring that in his more important functions the Governor act only with the consent of at least seven out of his twelve advisers. Early in 1673 however, William protested against this restraint. "It is rare", he wrote, "that I can procure seven to meet." Business in consequence was often much obstructed because such a condition demanded the almost unanimous consent of all present before any matter of importance could be undertaken.[19] As a result of his protests the position was so far amended that the quorum necessary for the conduct of business was fixed first at seven, and still later at only five members.[20] This came to be continued throughout the whole of the eighteenth century. In the Leeward Islands it became the accepted rule that a Lieut. Governor, being himself on the Council, could proceed to business so long as four other members were present, this combination being considered sufficient to satisfy the requirements laid down by the imperial authorities.[21]

Deaths in the West Indies during the seventeenth and eighteenth centuries were very frequent, and might easily give rise to serious reductions in the numbers of councillors. Since the islands were several weeks distant from England the speedy filling of such vacancies presented a problem of great difficulty, especially as English official procedure was notoriously slow. It was necessary therefore, that every local governor be given power to deal with such emergencies. A clause came quite early to be included within his commission, empowering him to make certain temporary appointments to the Board whenever its membership should fall so low as to endanger the conduct of public business through lack of the necessary quorum. As soon as the number of resident councillors fell below seven he was allowed by the addition of his own nominees, to bring the number up to that figure and no more.[22] When doing this,

however, he was not given an entirely free hand, but was expected to choose his substitutes from among those whose names had already been recommended to the English authorities.[23]

Moreover, his additions to the Council made under such circumstances, were permanent only if they were subsequently confirmed at home. If the Crown, instead of approving the vice-regal appointees, chose to select others to fill the vacant places, then the governor's men had to relinquish their temporary offices as soon as the Board, by virtue of such royal appointments, had been restored to its minimum of seven. Considerable confusion attended the carrying out of this provision. Some governors, of whom Daniel Parke of the Leeward Islands was perhaps the worst offender, obstinately persisted in filling up their councils beyond the prescribed limit, and received severe reprimands for their pains. Others did not recognise the fact that their temporary appointees, when not confirmed at home, automatically lost office as soon as royal nominations restored the council to the minimum of seven. But with the passage of time the repeated rulings[24] given by the Board of Trade in disputed cases of this nature gradually drove the matter home and lessened the recurrence of such misunderstandings.

Even as late as the sixties of the eighteenth century, however, this matter still provided an occasional storm. During the acting-governorship of President Rous, the Council of Barbados fell to six members. To bring the Board up to the required minimum, Rous straightway appointed a prominent planter named Irenaeus Moe. Not long afterwards, however, one Gedney Clark came forward with a direct royal mandamus of appointment, to claim a seat at the Board. The newcomer, while not demanding Moe's actual withdrawal, nevertheless desired precedence over him. The President and the rest of the Council, however, supported Moe on both counts. They supported his claims not only to the retention of his seat, but to his precedence as well.[25] But Clark was not to be baulked so easily. He demanded that the matter be laid before the Board of Trade. The latter quite properly and consistently refused to confirm Moe, who thereupon retired from the Council, leaving Clark to the undisputed enjoyment of his rightful place.[26] Such instances of the royal neglect or refusal to confirm a governor's choice were, however, comparatively rare, and we can accept it as a general rule that whenever the governor by temporary appointments brought his council up to a minimum of seven, his nominees were confirmed in due course by the Crown, and so admitted to a permanent place.

§ 6. Precedence at the Council Table

The West Indians of old were sticklers for dignity and privilege, and more than one controversy at the Council table arose over the question of precedence.[27] It is interesting to note that the Crown demanded that the seniority of one councillor over another should depend upon the dates of their appointment, as indicated by the dates upon their respective mandamuses.[28] The Leeward government and Jamaica obeyed the imperial behest in this respect, but the Barbadians throughout the entire eighteenth century clung to a custom of their own, by which precedence was determined, not by the date of the mandamus, but by that upon which each member was first sworn to his place. The differing results arising from the two practices are at once apparent. In the Leewards, a newcomer holding a direct royal appointment would take immediate precedence over a mere governor's nominee, even though the latter may have been officiating for some considerable time. In Barbados the reverse obtained. In the Leewards the time of receiving a mandamus was of no consequence. In Barbados on the other hand, it was a matter of considerable urgency, for a councillor who secured the quick delivery of his mandamus might beat to the council board and so secure precedence over one whose document bore an earlier date, but who had been less fortunate in its delivery.[29]

§ 7. Devolution of Government in Barbados and Jamaica

Before we turn from the Council in order to give our attention to other subjects, it is well to note that the early Councils in both Barbados and Jamaica were empowered as collective bodies to undertake the government of their respective islands in the absence, either through furlough or death, of both the Governor and the Lieutenant Governor.[30] Since Jamaica not infrequently possessed both, the Jamaican Council was seldom called on to perform this duty, but in Barbados, which did not ordinarily possess a lieutenant governor, the Council now and then had to administer the government for short periods. This collegiate responsibility, however, proved extremely inconvenient, giving rise to repeated disagreements among Council members, each of whom considered himself as good as any of his fellows. A composite body was manifestly unfitted for such a task, nevertheless it was not until 1707 that the Board of

Trade was induced to abolish this system in favour of a more simple one. But in May of that year an additional Instruction was despatched both to Barbados and Jamaica to provide that the administration, in the absence of both the Governor and his deputy, should devolve upon the President of the Council until the arrival of a superior.[31]

At first the President when acting in this capacity was given powers as complete as those enjoyed by the governor himself, but this proved to be an evil, and was soon afterwards rescinded, a further Instruction of 1710 obliging him "to refrain from the passing of any Acts except such as were immediately necessary to the well-being of the island".[32] So vague a restriction was of little effect, but it was all that existed until 1722, when far more drastic limitations were imposed, forbidding an acting-governor either to dissolve an existing Assembly, or to suspend officials of any kind, without the consent of at least seven of his fellow councillors.[33] This arrangement, giving complete satisfaction, came to be permanently adopted, and thus the temporary absence of the governor from Barbados, or the governor and lieutenant governor from Jamaica, was seldom attended with upset or considered of much consequence.

§ 8. Lieutenant Governors in the Leeward Islands

But if the presence of a lieutenant governor in places like Barbados and Jamaica was a matter of small consequence, it was far otherwise in the Leeward Islands, where the lieutenant governors were always of considerable importance. Since it was physically impossible for the Governor-in-Chief to reside in every island at one and the same time, it was always necessary to have in each island a local administrator with power to continue the ordinary functions of government during times when the Governor was visiting or residing in some other member of the group. Thus from the earliest years of the Restoration the appointment of a lieutenant governor in every island became an obvious necessity.[34]

Prior to 1672, these lieutenants were all appointed by the Governor-in-Chief of the Caribee Islands resident in Barbados, but after the separation of that year they came to be chosen by the newly created governor of the Leeward group. In the year 1686, however, this right of selection was taken from the latter and vested in the Crown itself—a further example of the then prevailing tendency towards a greater concentration of powers within the

royal grasp.[35] Although the authority wielded by the governor over his lieutenants was thus materially curtailed, he was still allowed a personal power both to suspend them from office pending the Crown's final pleasure, and to appoint substitutes in their stead. In 1715, however, the consent of the local Council was made necessary in ordinary circumstances to all future suspensions of this kind, so that the old discretionary authority of the governor was practically swept away.[36] As would naturally be expected, suspensions of lieutenant governors from this time onwards practically ceased.

The position of a lieutenant governor in the Leeward Islands was in some respects distinctly unusual. The chief function of such an officer in other colonies was the resumption of the government upon the death or absence of the Governor-in-Chief, and in ordinary circumstances his commission lay dormant until such a contingency gave it force. In the Leewards, however, each lieutenant governor performed many ordinary duties of administration even while his superior was still legally within the government, though in some other part of it. Under such circumstances we should expect to find a considerable overlapping of jurisdictions, the more so since the powers of the lieutenants were by no means as precisely defined as they ought to have been.

The commission given to the Governor-in-Chief certainly contained a few clauses relating to them and their powers, but these told only half the story. In the "absence" of the governor, each lieutenant governor with the consent of his local council was empowered to appoint judges and other officers, to grant lands, to issue public money, to adjourn, prorogue and dissolve Assemblies, and approve or reject such bills as the legislature might send up to him.[37] To offset these somewhat large powers, however, the short commission given by the Crown to each lieutenant governor directed him not only to exercise his jurisdiction conformably to the terms of the vice-regal commission, but also *to obey such orders as his superior might address to him.*[38] In other words, the way was thus opened whereby a commander-in-chief, simply by issuing orders to his subordinates, could set effective limitations upon the otherwise extensive powers seemingly allowed to them. And indeed, this was the very thing which did take place as the seventeenth century drew to its close.

For some years previous to the governorship of the elder Codrington, the inhabitants of one or two of the islands had been inclined to think that their lieutenant governors, during all times when the

Governor-in-Chief was away from their particular shores, were fully entitled to the enjoyment of complete administrative powers, even to the extent of being able to issue writs for fresh elections, and to give a provisional approval to all bills pending their transmission to the governor for his final assent.[39] So long as these claims went unopposed, each separate lieutenant governorship was in effect permitted to erect itself into a semi-independent jurisdiction during all times save those when the Governor-in-Chief himself was present within the island. Codrington, however, grew exceedingly dissatisfied with the manner in which some of his subordinates strove by a liberal interpretation of their powers to enlarge their independence to the farthest degree. He decided that some limitation was necessary, and found his power of being able to issue orders to them a very convenient weapon with which to effect their subjugation.

Nevis for years had been the worst offender. In 1696, therefore, Codrington placed Samuel Gardner, its lieutenant governor, under effective restraint by issuing to him a set of closely defined instructions for the future conduct of his office. Henceforth he was to summon new Assemblies only with the consent of his council, and was neither to prorogue nor dissolve them before he had first acquainted the Governor-in-Chief with his intention. The latter, after pointing out that the power of veto belonged wholly to himself, further denied to Gardner any right to give a provisional assent to bills. Finally he practically withdrew from the lieutenant governor any independent power of suspension, and prohibited him from filling up vacancies within any of the local offices, except upon occasions of the most urgent necessity, and then only with the advice and consent of his council. The appointing power within all the islands was to be retained as far as possible in the hands of the Governor alone.[40] In vain did the Nevis planters protest, and pray for a return to their previous customs. Codrington was adamant: his authority as Commander-in-Chief must in the future be given greater respect than it had hitherto enjoyed.[41]

At least one of Codrington's restrictions was destined to become permanent: after his death we hear no more of the claims of lieutenant governors to a provisional assenting power in legislation. In other respects, however, they temporarily regained their earlier authorities, and for a further twenty years preserved an independent power both to adjourn, prorogue and dissolve Assemblies, and to issue fresh writs for further elections.[42] But from the time of Governor Douglas's departure in 1713 these powers of a lieutenant governor over the House began to be destroyed. Subsequent governors

prohibited their subordinates both from dissolving Assemblies and from issuing writs for fresh elections, allowing them only the lesser power of adjournment and perhaps of prorogation. Their right to appoint to local offices was likewise practically withdrawn.[48]

The early uncertainty as to the powers of lieutenant governors resulted almost entirely from an ambiguity in the clauses of the governor's commission which concerned them. As has already been noted, each lieutenant, in the "absence" of his superior, was given a grant of quite clearly specified powers. No one, however, was quite sure what the term "absence" was meant to signify. Did it mean a mere absence from each individual island while on a visit to some other member of the group, or did it apply only to a governor-in-chief's absence from the entire province of his government? Perhaps in certain particulars it was the former which was meant, and perhaps in other particulars it was the latter. From what we have already indicated it is clear that until the period of change in the early eighteenth century, the term was locally interpreted to mean the governor's absence from each separate island. Such a construction was, of course, extremely favourable to each lieutenant governor, who was thereby allowed to perform many quite debatable functions whenever his superior was in other portions of the group. It was against this interpretation that the elder Codrington was the first to revolt.

The work which he commenced, his successors of the early Hanoverian period completed. The pendulum swung very much the other way. Governors came to see that the term "absence" did not possess a uniform meaning, but that in certain clauses it was used in the first sense, while in others it was used in the second. They used their own discretion in deciding which interpretation to place upon each particular. They did not need to apply home for a ruling, for it was rightfully in their power to decide the issue for themselves. By giving their commands to each lieutenant governor they could compel his obedience to any change which they desired. Accordingly they restrained the lieutenants from dissolving Assemblies or issuing fresh writs of election, and from appointing civil, military and judicial officials or dismissing the same; on the grounds that such were powers far too extensive to be entrusted to a mere subordinate, so long as a commander-in-chief was present anywhere within the government. Should a lieutenant desire any of these things to be done, he must move his superior to issue the appropriate writs or other instruments necessary to the process. But the powers of issuing public money and of adjourning the Assemblies were

recognised, upon the other hand, to be essential to the functions of the lieutenant governor: consequently they were allowed to him, and enjoyed by him at all times, save those comparatively rare occasions when some superior officer[44] was present upon the island.

The net result of this change was a serious diminution in the lieutenant's powers. He was reduced in fact as well as in law to a position of definite subordination. Nevertheless there were still many things of quite significant importance which he could and did perform, so that, within his own island at least, he continued to occupy a place of considerable prominence. He was the presiding member of the local council,[45] his actual membership of that body being proven by the fact that he had therein a vote upon all matters, legislative as well as executive.[46] In the absence of the governor-in-chief each lieutenant governor in conjunction with his council carried on the local administration, issuing orders for the performance of public tasks, superintending the execution of the laws, and issuing money from the local treasury in payment of works undertaken at the public expense.[47] We have already seen how Codrington took from the lieutenant governors their erstwhile privilege of appointing to vacant offices within their jurisdictions. Henceforward all major positions within the whole group, left unfilled by the Crown, came quite properly to be filled by persons appointed direct by the governor himself. Occasionally, however, the latter might allow the local lieutenant governor and council power to fill very inferior offices at their own discretion. For instance, on 6th August, 1718, the President of Nevis—who was acting-lieutenant governor of the island—communicated to the rest of the Board "three blank commissions for the appointing of coroners, which his Excellency desired may be filled up with such persons as his Honour and Council should approve of".[48] But this practice of delegating to others the power of making appointments never became common, although the governors-in-chief of the Leeward Islands throughout the eighteenth century customarily sought the opinion of the council most concerned before filling any post of importance within its territory.

In times of emergency too, when danger of insurrection or invasion might threaten the island, the lieutenant governor in the absence of any superior, became entitled to powers of military regulation and control similar to those belonging to the governor-in-chief himself. But such authority, exercisable only upon such extraordinary occasions, cannot be reckoned of much constitutional significance.

We should remember, too, that wherever the lieutenant governor was given authority in the absence of his chief, he was obliged to wield it only with the advice and consent of his fellow councillors. Thus was his discretionary independence reduced to the merest shadow. Even in the ecclesiastical jurisdiction which, as Ordinary, he exercised by deputation from the governor himself, the lieutenant was restrained to act only with the consent of his Board.[49] Because of this we may with confidence assume that the real executive within each island in the absence of the governor-in-chief, was rather the council as a collective body, than the officer who merely presided at the head of its table, and gave his signature to its official acts.

§9. The Lieutenant General of the Leeward Islands

Besides the governor, the lieutenant governors, and the councils, there was in the Leeward Islands one other official, the dignity of whose position ranked second only to that of the first-named, yet whose description I have purposely postponed to this late juncture. This was the lieutenant general. This dignitary was quite unknown to the islands before the reign of William III. In 1689, however, the Lords of Trade and Plantations, having agreed upon the need for bridging the wide gap which they imagined existed between the commander-in-chief and his lieutenant governors, decided upon the creation of an additional lieutenant governorship to extend over the whole group. A certain Thomas Hill was selected to fill the position, which at the last minute became changed in title to that of "Lieutenant General over all the Leeward Caribee Islands". His principal duty was to assist the governor-in-chief in all his difficulties, and to undertake the government of the whole group in the event of the latter's absence or death.

By the terms of his appointment this last requirement was especially demanded of him, but apart from that the commission varied little from the usual type of authority given to an ordinary lieutenant governor.[50] Some years were to elapse before the lieutenant general's status relative to each separate island was fully determined. Naturally the lieutenant governors were all exceedingly jealous of the new appointee. They could not dispute his title to the chief command of the whole group in the absence of the governor-in-chief, but some of them did oppose his right to any authority greater than their own at times when the latter was present.

Something of this spirit may be gathered from an incident which took place in Antigua upon the arrival of Governor Douglas in

1711. At the reading of the newcomer's Instructions it was discovered that, through some clerical mistake, the name of Lieutenant General Hamilton had been omitted from the list of councillors appointed to that island. The local lieutenant governor with the support of his fellow councillors at once made this a pretext for opposing Hamilton's admission to their body. The dispute grew very bitter, until it was deemed of sufficient consequence to be referred home to the Board of Trade, who without the slightest hesitation gave their support to the Lieutenant General. In reporting the matter to the Queen they asserted that it was both reasonable and for the service of the Crown that Hamilton, by virtue of his superior office, should be admitted into the council of each separate island, with power to preside and vote therein whenever present.[51] This ruling being confirmed by the Queen, an additional Instruction was speedily despatched to Douglas, bidding him to admit Hamilton to these powers without delay.[52]

The superiority of the lieutenant general being thus so conclusively established, no further troubles arose. Whenever present upon any of the islands he regularly supplanted the local lieutenant governor in the presidency of the local council. While sitting there he had full power to give his vote along with the rest upon all matters, whether of legislative or administrative concern. Under ordinary circumstances his powers were closely analogous to those of the lieutenant governors. He was given no powers of discretionary action superior to theirs, but was compelled as they were, to obey the orders of the governor-in-chief. He could be suspended by the latter just as they could, for just the same causes and in exactly the same way. Moreover all the acts which he performed in any island where he dwelt, required the majority consent of the local council to make them legally effective. The post carried no official salary.[53] Consequently the post of lieutenant general, though superior in dignity to that of a lieutenant governor, was under ordinary conditions of little additional advantage as long as the governor-in-chief was present within the government. Indeed throughout the eighteenth century one or other of the lieutenant governors not uncommonly occupied the higher office as well.[54]

§ 10. Devolution of Government in the Leeward Islands

This description of the lieutenant general brings us to the last point of importance respecting the Leeward Islands; a point which has to do with the important matter of governmental succession.

The commission given in 1672 to Sir William Stapleton as first commander-in-chief of the newly constituted government provided, in the event of his death or absence, that the lieutenant governor of Nevis should undertake the administration.[55] Later Instructions enlarged these terms by ordaining that government in the absence of the commander-in-chief should devolve first upon the lieutenant general, then upon the lieutenant governor of Nevis, and last upon the Council of Nevis acting as a collective body.[56] When, however, the Board of Trade in 1707 abolished the collegiate authority of the Barbadian Council in this respect, they took care to do the same for the Nevis body. By the new provision the government of the whole group was made to devolve first upon the lieutenant general, then upon the lieutenant governor of Nevis, and finally—not upon the Nevis Council—but upon its President instead.[57]

It was not long, however, before efforts began to be made to procure an alteration in these terms. The neighbouring islands began to voice their complaints against the preponderant share of political favour which the island of Nevis enjoyed. The latter, as the residence of Sir William Stapleton, had been the first centre of government within the group, but towards the close of the seventeenth century it had begun both politically and economically to lose its pride of place. Instead, Antigua had grown to be the most flourishing, progressive, and politically active member of the group. Its windward situation marked it out as the place most suitable for the governor's residence. In times of danger it was far easier to remove from it to the other islands which lay to the leeward than it was to do the reverse. Perceiving the strategic advantage attaching to this, the English authorities from 1708 onwards directed all governors to make Antigua their seat of residence.[58]

Having thus struck the first blow in the overthrow of Nevis, the other islands were not slow to follow up the attack. In 1728, Acting-Governor Mathew informed the Board of Trade of the deep sense of grievance felt by all the rest that Nevis, by virtue of the devolution settlement of 1707, should still continue to enjoy a dignity so out of keeping with its real importance. The complaints were specially indignant that, in the absence both of the governor and the lieutenant general, the government automatically should devolve upon the lieutenant governor of Nevis, to the complete exclusion of all other lieutenant governors. Mathew suggested that this arrangement might with advantage be amended. He recommended that government, in the absence of both the governor and the lieutenant general, should fall to the senior lieutenant governor resident anywhere

within the group.[59] Three years later his suggestion bore fruit. The Board of Trade, after having again reviewed the whole question, recommended to the King the adoption of the very scheme which Mathew had put forward, with the additional proviso that, if there should be no lieutenant governor present in the islands, then the President of St. Christopher might assume the administration. On being approved, this provision became formally embodied in the commission prepared for William Crosby,[60] the newly appointed Governor of the islands, and these were the terms which continued to regulate the succession throughout the remainder of the century.

Chapter IV

BRIDLING THE PREROGATIVE

§ 1. Introduction

Every royal governor in his Commission and Instructions was granted prerogative powers which he was authorised to put into operation whenever need should arise. These articles, which gave him authority over a great variety of subjects ranging from the establishment of courts to the military regulation of his province in times of emergency, were of special value during the early years of island development, when they sanctioned the performance of many things upon which local laws were still silent.

With the passing of years, however, plantation respect for prerogative authority rapidly declined. As Assemblies grew to positions of greater weight and permanence, they were tempted to take increasing cognizance of matters previously subject only to vice-regal control. In many cases it was a governor's abuse of his prerogative powers which convinced the people that the only security for their liberties lay in the regulation of their local institutions by their own laws.[1] At other times it was the widespread popular disregard of orders based only upon a governor's personal authority, that induced the Assemblies to support his prerogative demands with supplementary local enactments. A good instance of this is found in the Militia Acts. As a third factor there was the inevitable tendency for all Assemblies, just as a matter of course, to give legislative attention to the reform of any local jurisdiction seeming to require it, quite regardless of the propriety of their action in so doing.

As a result of these influences we find by the close of the seventeenth century that numbers of things which had once lain within the discretionary jurisdiction of the Governor, had gradually come to be regulated by local laws. Such matters included the establishment and regulation of courts, the organisation of the local militia, the collection of quitrents, the appointment of fees to be taken by local officials, and even the organisation of the local Assembly—in most of which the local legislatures had assumed a right to interfere.

This gradual exaltation of legislation over mere prerogative authority was not won, however, without a considerable struggle. Some governors opposed it more actively than did others. In Barbados for instance, the strenuous efforts put forward by Francis Lord Willoughby, Sir Richard Dutton, and James Kendall for the preservation of their discretionary authority, were in marked contrast to the indulgent administrations of William Lord Willoughby or Sir Jonathan Atkins, both of whom cared more for public goodwill than they did for the strict maintenance of their prerogative powers. Similarly in Jamaica the strict administrations of governors like Lord Vaughan and Lord Carlisle were very different indeed from the popular administrations of governors like Sir Thomas Lynch. In the Leeward Islands popular interference with the prerogative was not quite so frequent but did occasionally occur.

§ 2. Courts

The ordinary courts in Barbados and Jamaica had been consistently regulated by island laws ever since the Restoration. Barbados led the way with its *Court Act* of 1661 which simply regulated afresh the Courts of Common Pleas that had been in existence for a quarter of a century, and its *General Sessions Act* of 1663 which regulated anew the meetings of the Supreme Court or Court of Grand Sessions. Jamaica followed suit in 1664 with an *Act for establishing courts of judicature in this island* and another *Act authorising justices of the peace to decide all pleas not exceeding the value of forty shillings*, both of which, being limited to two years' duration, were re-enacted from time to time and so kept in operation until such time (1681) as permanent Court Acts could be passed. Both the Barbadian Act of 1661 and the Jamaican Acts of 1681 were confirmed by the Crown and, modified in certain respects by later enactments, remained in operation throughout the rest of our period.[2]

For Court purposes Barbados was divided into five precincts, in each of which petty suits and offences were tried by Justices of the Peace in Quarter Sessions. Each precinct, too, had its Court of Common Pleas having jurisdiction over civil actions; and finally there was the Supreme Court, better known as the Court of Grand Sessions which normally met but twice a year in Bridgetown for the trial of all serious criminal cases. Appeal from the verdicts of these courts was to the Governor and Council, who had jurisdiction both

as a Court of Appeal and as a Court of Chancery. The Jamaican system bore a broad resemblance to the Barbadian. Jamaica too, was divided into precincts in each of which petty suits and offences were tried by the Justices of the Peace in Quarter Sessions. Each precinct also had its Court of Common Pleas which had jurisdiction, however, only over cases not exceeding £20 in amount. All the more serious civil as well as criminal cases were tried by the Supreme Court which met quarterly in Spanish Town, presided over by the Chief Justice and four or five assistants. When in 1758 Jamaica was divided into three counties, the ordinary jurisdiction of the Supreme Court was restricted territorially to only one of these—the County of Middlesex—while entirely new Courts of Assize were set up for the counties of Surrey and Cornwall, to be held in the towns of Kingston and Savanna la Mar respectively. These Assize Courts were given a status practically equal to that of the Supreme Court itself. As in Barbados the Governor and Council acted as a Court of Appeal; but the Council bore no part in Chancery proceedings, the Governor in Jamaica being sole Chancellor and having the assistance only of three Masters in Chancery of his own choosing.

In the Leeward Islands the first courts—Petty Sessions, Common Pleas, and General Sessions—seem to have been first set up by prerogative action and the Assemblies seem to have been slow to interfere. In 1692, however, the Antiguan legislature remodelled the Antiguan courts by passing a *Court Act*[3] for the purpose, and within a few years the other Leeward Islands all copied the example. In 1693, however, a curious situation arose in Antigua which shows the kind of mentality that court Acts quickly engendered. By the Act of 1692 the Antiguan Courts of Common Pleas were to be held only during the months March to July every year—an arrangement that was extremely inconvenient to the merchants and other transient folk that visited the island. These people asked Governor Codrington to use his personal authority to institute extra court sittings for their special benefit. Being entirely sympathetic, Codrington gave the necessary directions, only to find himself hotly opposed by the Assembly which contended that such sittings were utterly illegal as having no foundation in law. The Governor in reply asserted with some truth that the *Court Act* was far from being definitive, and did not bridle the prerogative in the matter of further court regulation. The House, however, persisted in its claim that his action was contrary to law, and in the end apparently gained the point.[4]

Just at this time, however, when it seemed that the island Assemblies by force of usage were establishing a right to legislate upon

matters of prerogative interest, a serious challenge suddenly arose from a comparatively unexpected quarter. The supervision of colonial affairs had been for over twenty years entrusted to a special Committee of the Privy Council, when in 1696 a change was decided upon. The old Committee was disbanded, and in its place appeared the new Council for Trade and Plantations, commonly known as the Board of Trade. The old Committee had been somewhat dilatory in its examination of such provincial laws as had come before it for consideration, but its successors, with new-broom-like thoroughness, were for a time much more careful and efficient. Colonial governors were held more strictly to their obligation to send home promptly copies of all the Acts newly passed within their dominions, and these were regularly submitted to the law officers of the Crown for their examination and report.[5] The latter were disturbed to find how deeply colonial Acts of the past had entrenched on matters of prerogative jurisdiction, and they did what they could to resist this tendency. Attorney General Northey[6] became particularly resentful of the way in which provincial laws still strove to supersede the prerogative in the organisation and control of courts. Consequently he objected against, and secured the disallowance of some Court Acts of the Leeward Islands, the passage of which had cost the younger Codrington an extraordinary amount of time and effort. Reporting against an Antiguan *Court Act* of 1704, Northey gave his opinion in the following words: "By Your Majesty's Commission . . . to your Governor of this island, he is empowered to erect courts and name judges and other officers, and what such Governor may do, is [here] done by this Act; which seems to be prejudicial to the authority given . . . to your Governor."[7] The measure was accordingly disallowed.

There is clear evidence, however, that the Board of Trade—and even Northey himself—soon afterwards retreated from this rather extreme point of view.[8] Doubtless they came to realise how risky it was to leave the organisation of lower colonial courts—with their multiplicity of suits and styles of procedure—to the sole discretion of each governor. Accordingly we find by the second decade of the century that the propriety of West Indian Acts for this purpose was conceded in England, and such laws were allowed to remain in operation provided their general terms were quite satisfactory.

But although this concession was thus early made in the case of inferior courts, it was not considered applicable to the case of higher ones. The establishment or alteration of such a court as the Chancery was still deemed to belong solely to the Crown. Whenever a colonial

legislature presumed by Acts of its own to trespass upon this higher field, its action was hotly resented by the imperial authority, and its measures subjected to summary disallowance.[9] This continued, moreover, for a further sixty years.

By his Commission and Instructions a West Indian Governor was made sole Chancellor within his province, but in Barbados an old Act of 1655 joined the Council with him in this work.[10] This practice became so firmly established that the Act was not disallowed at the Restoration, and the Barbadian Councillors for generations continued to enjoy with the Governor a co-equal share in all Chancery jurisdiction. In Jamaica, however, the Governor was always sole Chancellor, being assisted in this duty by three Masters in Chancery of his own choosing.[11] In the Leeward Islands, too, the form of Chancery proceedings down to the eighteenth century depended entirely upon the will of the Governor, who altered them from time to time at his own discretion, sometimes allowing the lieutenant governors and their councils to exercise jurisdiction, and sometimes confining the power wholly to himself.

At the beginning of the eighteenth century, however, an attempt was made in Antigua to follow the Barbadian practice of joining the Council with the Governor, and to grant chancery jurisdiction to the Lieutenant Governor and Council during the Governor's absence. A law for the purpose was accordingly passed and assented to by the Commander-in-Chief but, on being sent to England, was speedily disallowed upon the ground that the power of altering the form of Chancery lay most properly within the Governor's prerogative.[12] The fate of this Act automatically annulled a further measure which had sought to extend this system to every island of the Leeward group.[13] Nothing more was attempted until in 1715 the Antiguan legislature passed a further Act which joined the Council permanently with the commander-in-chief in the Court of Chancery. The Board of Trade recalling that this from earliest times had been the Barbadian custom, now consented to its extension to Antigua, and reported the Act for confirmation.[14]

Thus encouraged, the Antiguans next planned to make their Chancery perpetual instead of dependent wholly upon the presence of the Governor within their island. Accordingly they sought in 1728 to revive the earlier scheme—disallowed in 1705—which had permitted the Lieutenant Governor or President to hold the court in his absence. The resulting Act again met with vigorous opposition from the Board of Trade. Although the Board did not object to the ends designed in this Act, it did deny that an Act of Assembly

was the proper instrument for securing those ends. The measure had in effect set up a Deputy-Chancellor, with power to assume all Chancery administration whenever the real Chancellor was absent. The Board considered this to be an invasion of the prerogative "because the appointment of Judges and Chancellors" was a power which ought "always to be exercised immediately by your Majesty". The Act was therefore disallowed, though steps were taken to satisfy the wishes of the Antiguans by the insertion of suitable amendments in the royal Instructions given to all future governors. That which the Antiguans desired was accomplished, therefore, not by means of their legislative efforts, but by means of prerogative indulgence.[15]

Some years later the planters of St. Christopher, emboldened by the ostensible success which had attended the efforts of their neighbours, and wishing to establish a permanent Court of Chancery within their island, passed an Act[16] empowering the Lieutenant Governor or President to hold that court in the absence of the Governor-in-Chief. As in Antigua, the Councillors were to act as assistant judges in the court, and their votes were to be taken in the giving of all judgments. This measure also met with great opposition in England. Again the imperial authorities fully sympathised with the planters' aspirations, but were of opinion that the wrong constitutional method had been followed in trying to attain them. It would have been better if the islanders, by petition and address to the King, had prayed him to establish such a court as they desired. The Act for disciplinary reasons was disallowed, but the Governor was instructed to recommend the passage of a fresh Act of a nature similar to that just annulled; the new measure "to take effect without any further significance of His Majesty's pleasure".

This decision indicates a decided weakening. Instead of adopting the attitude of firmness and the same avenue of prerogative settlement which they had taken in the Antiguan case, the Privy Council for the first time really did surrender to colonial enactment the right both to establish and to regulate the form and organisation of higher courts. That this was no unintentional step is confirmed by the fact that when, only a year or two afterwards, the Montserrat legislature —following the lead of the others—passed an Act to establish a permanent Court of Chancery within its shores, the measure was, after some hesitation, confirmed.[17] The Board of Trade had come at last to realise "that the efficacy of Royal Commissions . . . in such cases was questionable" and that an Act of the local legislature suitably drawn for that purpose was just as advantageous.

It must be allowed, therefore, that by the early seventies of the century the Board had conceded the propriety of colonial Acts for the establishment of all courts, high as well as low. It had been fighting a gradually losing battle. Throughout their history the legislatures of all the West Indian colonies had passed repeated measures for the establishment and control of the ordinary courts of Petty Sessions, King's Bench, and Common Pleas; now in all but Jamaica[18] the regulation of Chancery itself had fallen to their province.

The position of the Governor and his Council therefore had been profoundly changed. In the seventeenth century they had been the correct authority both for establishing new courts and for altering methods of procedure in the old: by the close of the eighteenth century practically all this power had been removed from their discretionary control and vested in the legislature as a whole, by whose act alone could further alteration be made. Moreover, many of the actual writs which in earlier times had proceeded from the Governor in person, now issued from one or other of the court officials themselves. The Governor was not only excluded from a power of altering courts, but was also bereft of much of his former jurisdiction within them. In three fields only was power still left to him. He still officiated with his Council as a Court of Appeal from judgments of the lower courts, and, either with or without the Council's assistance, was Chancellor within his province. Finally, no Court Act ever sought to take from him his undoubted right, with the consent of Council, to appoint judges and all non-patentable court officials—the number of judges was almost invariably specified, but their appointment was still left properly to the discretion of the Executive.[19]

Similarly the Governor's power to dismiss judges and non-patentable officials was not challenged except in Jamaica where persistent efforts were made in the latter half of the eighteenth century to increase the security of Supreme Court judges by enacting that they hold their appointments "during good behaviour" instead of during pleasure. The first Act for this purpose, passed in 1751, was speedily disallowed in England as being too restrictive of the prerogative.[20] A quarter of a century later, however, the Jamaicans returned to the charge with a further bill of the same nature (1778) to which Governor Dalling refused his assent, but remitted it home for the Privy Council's perusal and advice. In the confusion of the times it does not appear that the Governor was ever instructed what to do if the agitation were ever renewed. When, therefore, in 1781,

highly incensed by a recent episode in which four Supreme Court judges had been somewhat high-handedly displaced, the legislature passed a very similar measure "to make the places of the judges of the Supreme Court of judicature and justices of Assize . . . more permanent and respectable" by, in effect, converting their tenure to one of good behaviour, Dalling assented to it and sent it to England for confirmation. It permitted a governor, with Council's consent, merely to suspend a judge until the Crown's determination of the merits of the case should be made known; the judge to be supplied with a copy of the reasons for his suspension in order that he might justify himself before the Privy Council if he could and so retain his commission. After some hesitation the Act was confirmed in England, thus making distinct legal history as the first colonial law of its kind ever to win acceptance.[21]

§ 3. The Militia

It was not in the judicial field alone that legal bounds were placed upon the vice-regal discretion. The history of island militia laws illustrates the same process. From the very earliest years the governors had been endowed with prerogative authority to organise their people into convenient military units suitable for employment in times of emergency. Their Commissions and Instructions empowered them to set up Articles of War for the regulation of the inhabitants in time of slave insurrection and foreign invasion. The Assembly, according to these documents, was given no share in military organisation.[22]

The authority of the Governor and Council, however, soon proved very inadequate for the purpose intended. Their orders were only tardily obeyed: unsupported by any locally known laws they were deemed tyrannous, and were disregarded by the planters upon every possible occasion. As long as military efficiency remained dependent, therefore, upon the governor's chances of enforcing obedience to his personal behests, the island forces continued in grave disorder. At last many governors in desperation were compelled to invoke the aid of their Assemblies in order to supplement their authority with the backing of known laws.[23]

In Barbados the planters had been accustomed even prior to the Restoration to regulate their militia by means of local legislation,[24] and they continued that method throughout the future, generally it would seem with their governor's sincere approval. Sir Jonathan Atkins, writing in 1680, stated the fact that he had no reliable

powers of command there, save under the Militia Act, "for they are under no restraint except so far as they are bound by that law".[25] The position was much the same in Jamaica where one of the first laws ever passed by an Assembly was the *Militia Act* of 1664 making statutory provision for the island militia, which up to then had been regulated only by order-in-council. This *Militia Act*, like all other laws of this early period, was limited to two years' duration unless confirmed in England, and since this confirmation was not forthcoming, it was re-enacted from time to time to keep it in being. Finally, in 1681, the Jamaican constitutional crisis being over, and a change in the royal Instructions permitting laws to remain in indefinite operation unless disallowed at home, the legislature hastened to take advantage of the new condition by passing a batch of fundamental laws, among them a *Militia Act* (1681)[26] which, being confirmed in England, remained in operation for the remainder of our period as the basic law upon which the organisation of the militia rested for over a century. In the Leeward Islands, too, the Assemblies even in the early years of Stapleton's governorship are found assisting in the regulation of the local militia by the aid of special laws.

In none of these early Militia Acts, however, is there evidence of any tendency for the Assemblies to place undue restrictions upon the essential prerogatives of their governors. Such Acts were intended to assist rather than to obstruct the latter in their work. The usefulness of local laws for the assistance of governors in their military organisation was fully recognised in England at quite an early date, and they were welcomed accordingly. The manner in which Englishmen of the early Restoration period had passed laws for the regulation of their own militia, and so withdrawn the civilian forces from the discretionary control of the Crown, possibly caused them to sympathise with colonial endeavours in the same direction. In any case, an additional Instruction sent in 1684 to Sir Richard Dutton in Barbados, spoke of the desirability that "a due regulation of the militia be established by known laws" and after adverting upon the temporary nature of the existing Act, directed him to take pains to secure the passage of a suitable Act of more permanent duration.[27] Thus there was never the same opposition to Militia Acts that there was to laws for court establishment.

But with the passing of the years, further militia laws came to be framed within most of the islands, which show that here and there legislators had begun to use their influence to less praiseworthy ends. Whereas these Acts had been first devised as a security against

governmental tyranny, they now became employed as a means of acquiring a degree of freedom amounting almost to licence. In an age so characterised by international rivalry, the island defences should have been maintained upon a high level of efficiency. But such efficiency in a civilian force necessitated much irksome training. The average planter found such military obligations highly distasteful, and there is good reason to fear that in the Militia Acts of later days a surrender was often made to the popular demand for easy training obligations, with the result that the discretionary powers of the Governors and their Councils were much curtailed, muster days reduced to an absolute minimum, and general efficiency much impaired.[28]

Concerning the Barbadian Act there is overwhelming proof that this was the case. Governor Byng, writing to the Board of Trade in 1740, asserted that the island forces presented "but an indifferent appearance", the Horse being "not properly furnished either with coats, hats, saddles, carbines, belts, swords, or boots, nor provided with arms as they ought" to have been, while the regiments of foot were "not provided with muskets or fuses, coats, hats, shoes, or other accoutrements, nor in any respect armed or clothed in the manner directed by law". In short, he feared that there were many "defects in the laws appointed for the settlement of the militia" of the island.[29] Later governors told the same story, but, owing to defects and omissions in the Act, were practically powerless to effect a remedy. The truth was that the military obligations imposed by the Act hung so lightly upon the shoulders of the inhabitants that none was prepared to agitate for its amendment.[30]

In Jamaica, too, the militia in the eighteenth century became notoriously inefficient, though for rather different reasons. The Act of 1681, though good at the outset, gradually sank into obsolescence. Having been confirmed in England, it was allowed to remain in operation long after it had ceased to be effective. Its worst feature was a clause by which no commissioned officer, once having resigned or been superseded, could be compelled to serve again in any capacity inferior to that in which he had first acted. Since both resignations and supersessions were common, the net result of this was a great accumulation of gentlemanly drones known as "reformed" officers, who were virtually exempt from service. Thus the people who ought to have been the bulwark of the system—men of ability and station—were the very ones conspicuously absent from all musters.

Moreover, even in the points where the Act of 1681 was strong, gradual but systematic efforts were made to whittle it away. It had

given the Governor and Council of War,[31] for instance, complete freedom to proclaim martial law in times of great emergency. In course of time this proved irksome to the people and distasteful to the Assembly which, too cautious to make a frontal attack on the Governor's powers in such a justifiable particular, was astute enough to assail them from behind. For example, in the 1730s when the Maroon revolts necessitated repeated periods of martial law, the Assembly, unwilling to permit the Governor and Council to proclaim martial law for months on end, commenced the practice of enacting laws to sanction the proclamation of martial law for periods of from three to six months, thereby creating the impression that an Act of the legislature was the more correct constitutional procedure for this purpose.[32] Another strong feature of the 1681 Act was the freedom it left to the Governor and Council of War to frame articles of war for the control of the inhabitants in times of martial law. The liberty-loving planters came gradually to resent this, and from 1760 onwards the legislature, at the Assembly's instigation, began passing annual Acts specifying and detailing the substance of all articles of war, thereby robbing the Governor and his military associates of the freedom of action which had once been so useful.[33]

That these changes were the result of deliberate policy is shown by the way in which the Assembly, when the time was ripe, boldly advanced to the logical completion of its plan. In 1778 it tried virtually to constitute itself the Governor's Council of War, with power to oblige him when to declare martial law and when to end it.[34] This move being steadfastly opposed by Governor, Council, and Crown, the Assembly was temporarily thwarted in its aspirations, but shortly afterwards did succeed in getting a law passed and accepted, which swamped all future Councils of War by the inclusion of all its own members.[35] Thus it may be said to have gained a considerable part of the power for which it had so stubbornly striven. With Assemblymen occupying a possible 43 places in his Council of War, bold indeed would be the Governor who tried to follow an independent line of policy.

Unfortunately it cannot be said that the Assembly's interference in the composition of Councils of War or formulation of articles of war did anything to increase efficiency. Quite the contrary. Not until 1783 did it make any effort—and then with little success—to remove the abuse of the reformed officers; and in its zeal to protect the citizens from anything like arbitrariness it inevitably increased the difficulty of keeping the militia well disciplined. Long's well-known criticism of the Jamaican militia written in 1774 merely

confirms reports that had been current for over fifty years that it was hopelessly ineffective. Long, with some cause, blamed successive generations of governors, but it is clear that much of the fault lay with the planters themselves.

In the Leeward Islands the situation does not appear to have been quite so bad. Nevertheless, throughout the whole group, the discretionary powers of the executive were in ordinary circumstances very much reduced. The Governor and Council could organise the militia only in a manner subject to all the limitations and conditions laid down in the Acts. Some indication of a governor's impotence in the face of such restrictions may be gathered from an angry protest delivered by Governor Mathew in 1744 to the Assembly of St Christopher concerning the defensive situation of that island. "I am not disappointed", he remarked, "at finding but little of discipline among you. Your militia laws are such as seem to have intended there should be none. I now heartily regret that I assented to any of them, and that such a one still subsists to the subversion of all military duty and subordination. 'Tis better for me to put my character at stake by doing my best to defend the island in the strength of my commission and his Majesty's right to array his subjects for defence of his dominions, than to run the risk of being condemned for miscarrying under the preposterous limitations of a law that has no meaning for the King's honour and service, or for our own country's safety and defence. It must be no bad news for our enemies to know we choose rather to risk poverty and slavery under them rather than trust one another under fears of evils that never did nor ever can happen."[36]

So throughout the West Indies in the military field as in the judicial, the prerogative had become subordinated to local law. In the eyes of the planters freedom had supplanted potential tyranny; a certain measure of self determination had supplanted the danger of external regulation: the fact that this freedom was capable of abuse was considered a matter of secondary importance.

The several militia laws which were enacted in each island included such matters as the following within the scope of their regulation. They generally defined each man's obligation to serve, stated how many regiments should be established, frequently specified both the times and places of exercising, and described the dress and equipment with which each man was to provide himself. In addition they prescribed the punishments which should attend absence from parades, neglect of equipment, or disobedience of orders: they established the authority of the officer or court which was to take

cognizance of these offences, and ordained how the fines and other penalties should be carried into effect. They thus established known regulations, neglects of which were punishable by reasonable penalties, imposed by a properly established tribunal. In times of peace, therefore, the free discretionary powers of an island commander were almost completely abolished.

In times of emergency the powers of Governor and Council were offered freer play, though restrictions still remained in many matters of most primary concern. All the Acts closely regulated the making of alarms.[37] Most of them specified the number of vessels, the appearance of which would be sufficient to justify the raising of an alarm. In addition, too, the laws of Montserrat, Nevis, and St Christopher allowed the island commander an independent right to order an alarm whenever he should think it necessary, but those of Antigua and Barbados refused this concession. In the two latter places the Governor and Council had to secure the Assembly's consent before they were permitted to raise special alarms or issue proclamations of martial law; and in Jamaica after 1779 the Council of War whose consent was necessary to all proclamations of martial law consisted mainly of Assemblymen.

Further provisions within the Acts tended likewise to preserve the people from undue arbitrariness even in times of martial law. Instead of allowing the governors to make any regulations and punishments they liked upon such occasions, the progressive tendency of all militia legislation throughout the eighteenth century, was for the island legislatures themselves to ordain measures for the complete regulation of the forces, in times of alarm as well as in normal times. But, of course, the actual extent to which they succeeded in controlling the action of the Executive in times of emergency depended very largely upon the circumstances peculiar to each occasion.

Moreover, we have no evidence, except in the case of Jamaican Councils of War after 1779, that the Assemblies ever tried to usurp the essential administrative functions properly belonging to the Governor and Council as the correct military authority within each island. We do not find Assemblies, for example, ever assuming to themselves a power of military appointment, or a right to issue orders or commands. Instead of this they were content simply to use legislative machinery to set up a network of rigidly narrow channels, within which alone the governor was able to exercise that executive authority which properly belonged to him.[38]

§ 4. Quitrents

The only West Indian island on which Crown grants of land were widespread enough to yield quitrents of much value was Jamaica. Here in the early years liberal grants of land were made to all newcomers upon condition that they paid an annual quitrent of a halfpenny or so per acre.[39] Undoubtedly the fixing of the quitrents and the methods taken for their collection were originally in the discretion of the Governor and Council, but the matter was of such importance that we find even the earliest Assemblies beginning to take it into their own consideration and frame laws to regulate the making of surveys, the issue of patents, the taking of fees for these, and—after 1672—fixing even the quitrent rates.[40] Finally in 1681 the legislature passed an *Act ascertaining the quitrents and manner of receipt thereof* and in 1683 an *Act for regulating surveyors*, both of which were confirmed in England and remained in operation for a good many years.

As a source of revenue the quitrents proved somewhat disappointing on account of the neglectful way in which they were collected. Evasions and arrears were general, and it is difficult to resist the conclusion that the Assemblies as a whole were content that this should be so. In Modyford's time the total receipts amounted to no more than from £300 to £400 a year. They fluctuated greatly according to the pains taken in collecting them. For the year ending 30th September, 1707, the return was very high, totalling just over £2,000; three years later it fell to what must surely be an all-time low record of just over £87! Nevertheless they probably averaged several hundred pounds a year, as evidenced by an estimate made in 1728 that, efficiently collected, they would yield about £1,400 a year. An Act passed in 1745 considerably augmented the revenue, especially by compelling the payment of arrears, so that the receipts for a time amounted to considerable sums, but afterwards fell off again.[41]

The important fact about the quitrents is, however, not what income they yielded—it was negligible enough, anyway—but that the liberties of the planters liable to quitrent were never allowed to depend on the tender mercies of Governors and Councils, but were constantly safeguarded—one might almost say, *too* well protected—by their fellow planters in the legislature. The whole quitrent system from the earliest days of Assemblies was regulated by known laws, for when the Acts of 1681 and 1683 grew obsolete, they were promptly replaced by later ones, and so on through the succeeding century.[42]

§5. Fees

The same Rule of Law came to be extended, though to a much less extent, into the domain of island fees. The history of fee taking provides, in fact, some interesting examples of ultimate victory for the prerogative. From the earliest years of the Restoration the royal commission had given to every Governor and his Council full power to establish and alter the scales of fees to be taken by all officials within his territory. The West Indian Assemblies gave early indication, however, of their claim to interfere in any cases where they felt disposed.

The very first Jamaican Assembly, meeting early in 1664, among other things passed two other Acts to regulate the fees of the island Secretary and the Provost Marshal, both of whose fees had previously been established by order-in-council only. Later Assemblies extended this process, until by 1672 the fees of the Secretary, the Provost Marshal, the Surveyor General, the Chancery, the Grand Court, the inferior courts, and the coroners were all laid down by law.[43] The first *permanent* Jamaican Act of this nature was that passed in 1683 which set fees for the Naval Officer and the Clerk of the Markets as well as for those already mentioned, and remained on the statute book for nearly thirty years.[44] The earliest Barbadian Acts of the Restoration period to prescribe fees were three laws passed in 1667, 1668 and 1678 respectively, which together regulated the fees of all public officials and remained on the statute book for a great many years.[45]

The disposition to regulate fees by law did not become common in the Leeward Islands, however, until the close of the seventeenth century and the beginning of the eighteenth century.[46]

In 1696, however, the Antiguan legislature, in passing an *Act to . . . oblige the Secretary and Marshal to give security for . . . the faithful performance of their offices*,[47] prescribed the fee which the Secretary should demand for making transcripts of laws for the convenience of private persons. In the following year the same island attempted the passage of a wider Act for regulating the fees of all local officials. After some controversy the measure was finally passed early in 1698. Apparently it was a temporary measure and remained in operation only two years.[48] From this time onwards the Antiguans desisted from any further efforts to establish fees by positive law, and remained content with prerogative regulation in such matters.[49]

Nevis was the next Leeward Island to attempt fee regulation by means of positive laws. In 1705 the local legislature passed Acts

settling fees for both the Secretary and the Marshal of the island. But both of these were disallowed in England "as entrenching upon her Majesty's prerogative and diminishing the rights of officers holding under your Majesty's Letters Patent".[50] The Board of Trade, with the vigilant Northey at its side, had not yet outlived its jealousy of colonial Acts for the performance of functions that belonged more properly to the Governor and Council. Despite this, when some further Acts from Nevis to regulate the fees of the Secretary, the Marshal, and the justices, came before the Board in 1711 it exhibited a change of attitude by permitting them to remain in operation.[51] This being so, one would have expected the neighbouring islands to reap a corresponding advantage, but strangely enough, except for St. Christopher,[52] they failed to do so—a fact which demands an explanation.

Though the Board of Trade had surrendered in the matter, the Leeward Island governors of the period were not prepared to do so. Some of these were exceedingly jealous of the recent encroachment which had been made upon their preserves, and were determined to resist all such attempts in the future. Their resistance was the more effective in that their power of veto enabled them to reject any bill of which they disapproved. The able and respected Walter Hamilton, appointed Governor of the Leeward Islands in 1715, soon found himself obliged to oppose the Montserrat planters for instance, when in 1718 they passed bills to regulate the fees of their Secretary, their Provost Marshal, and their Chief Justice. The Governor point-blank refused his assent on the grounds that "the settling of fees" was entirely vested in himself and Council.[53] At the same time he expressed his willingness to compromise by allowing the House to co-operate with the Council in drawing up a docket of fees, to which he in term would be pleased to give his official confirmation. This course was apparently adopted, and not for another ten years do we hear of any further attempt of the kind.

In 1729, however, the Montserrat Assembly, in framing a new Court Act, sought to include within it the table of fees to be taken by the several court officials in the performance of their duties. The Council passed the measure but when it was presented to Lord Londonderry, he peremptorily refused to assent to it. Sending it back to the legislature he demanded that the tables of fees be deleted, and that the Assembly should "not intermeddle in a point not belonging" to it.[54] The House, preferring the withdrawal of the fees to the loss of the whole bill, acquiesced in his demand, and from that time onwards the fees of the court officials, as well as all other

officials in Montserrat, were regulated exclusively by the Governor and Council. Londonderry's successor in office,[55] however, was not so careful of his dignity, with the result that in 1732 he gave his assent to a Nevis *Court Act*[56] which established the fees to be taken by the various court officials in the very fashion which had been denied to Montserrat only three years before.

In Jamaica, as we have already seen, the regulation of fees was early undertaken by the Assembly by the passage of a number of short-term Acts culminating in a permanent *Act for regulating fees*, passed in 1683. But by the beginning of the eighteenth century this Act was already becoming out-of-date and a new one required. The Assembly in 1706 prepared a bill which sought to regulate anew the fees of all public officers and even prescribed lawyers' fees, but Governor Handasyd refused his assent because he considered its fees unreasonably low.[57] Three years later the House returned to the charge with a slightly more reasonable bill which received Handasyd's assent, but raised a storm of protest in England among patent officers, lawyers, and the like; and the Board of Trade advised the Assembly to prepare and pass a more generous measure in order to quiet these objections. It did so in 1711 in an Act that again set tables of fees for all public officials and lawyers. This in due course was confirmed by the Crown and passed into permanent effect, being still on the statute book at the end of our period.[58]

After some years the fees demanded by public officials began to increase despite the Act, and in 1728 the Assembly expressed concern at the tendency but took no steps to restrain it; consequently it continued unabated until thirty years later the law had become a dead letter, many of the fees actually charged being from twice to four times as much as the law of 1711 allowed. This was due partly to the rapacity of the patentees and their deputies and partly to the financial inflation of the times which caused all prices and wage levels to rise. Fee taking in all the colonies had become exorbitant, and an additional Instruction to all governors in 1764 bade each enquire into the position and, if necessary, issue a proclamation restraining public officials from taking fees in excess of "what have been established by proper authority". Governor Lyttelton issued such a proclamation on September 29th of that year, ordering all officials on pain of prosecution to refrain from demanding fees in excess of those allowed by law.[59]

Several patent office deputies refusing compliance, the Attorney General was instructed to commence prosecutions. Vigorous protests were lodged in England against these measures, the patentees

contending that their fees were sanctioned by force of usage and were not as unreasonable as the islanders claimed. Vested interests won the day, the Board of Trade and the Privy Council reversing their attitude and instructing Lyttelton to protect the patentees in the enjoyment of their customary fees, and to discontinue the prosecutions.[60] The patentees and their deputies thus emerged triumphant, and in all but minor instances continued to the end of our period to enjoy the exorbitant fees which custom had established. The Assembly felt practically powerless against them. Indeed, the only patent officers in Jamaica whose fees during the latter half of the eighteenth century were wholly or substantially regulated by island law were the Clerk of the Supreme Court and the Receiver General.[61] Otherwise the only officials whose fees were so controlled were the locally appointed ones such as constables, justices of the peace, coroners, the Chief Justice and his assistants, the Masters in Chancery, and, at the very end of our period, the Governor's private secretary.[62]

In Barbados the question of the legislative regulation of fees came to a head in 1733. The Acts passed in the early period of the island's history having become ineffective and obsolete, popular clamour demanded new ones. The Council held a detailed enquiry into the matter and carefully noted and reported the facts of the situation. At the invitation of the Governor, Lord Howe, the Assembly then set to work to prepare a new *Act for the better regulating . . . the fees of the several officers and courts of the island.* This was passed in due course, received the Governor's assent, and was sent home for the royal confirmation. The new table of fees, however, evoked loud protests from the various patent officers within the island, who, claiming that the fees were wholly inadequate, petitioned the Crown for the rejection of the measure, and were largely responsible for its subsequent disallowance.[63] The rejection of this Act was a severe blow to the Assembly, but instead of passing a new one, it was content to allow the Governor and Council to settle fresh tables of fees, in the drawing up of which it doubtless exercised considerable unofficial influence.

From this time onwards Barbadian governors took pains to keep fees within the bounds of moderation, and down to the governorship of James Cunninghame the Assembly never again troubled to interfere. But the unconstitutional fees which this man demanded in order to supplement the diminished income which the legislature had allowed him, re-opened the whole question of fee regulation. The Governor's exactions were viewed with displeasure by the

imperial authorities. The Privy Council, seriously disturbed by the turmoil which rent the island, came to recognise not only the propriety, but even the desirability of allowing island fees to be regulated by local laws. Cunninghame was recalled, and David Parry, his successor, was instructed to recommend to the Barbadian Assembly the passage of an Act for the better establishment and regulation of all fees.

Nothing loath, the islanders obliged him by enacting that the regulation of all fees was the joint concern of the Governor, the Council, and the Assembly. They erred, however, in "tacking" this declaration to the Act which made provision for the new governor's salary, with the inevitable result that the entire Act was summarily rejected by the Crown, and the binding force of their declaration thereby wholly destroyed.[64] It does not appear that the Barbadians took any further steps that century to re-establish in law the principle of Assembly participation in the fixation of fees; but the result of the Cunninghame controversy had been so great a moral victory in their favour, that doubtless they thought it unnecessary to affirm the dictum any further.

From this somewhat involved story of island fee taking, two broad truths emerge. First, we see that the early successes of the Jamaican and Barbadian Assemblies in controlling fees by island law were not vigilantly followed up, and the legal rates, carelessly allowed to decay, proved incapable of revival on account of the strength of patentee influence in London. Thus the scales of fees in both islands for the greater part of the eighteenth century, when regulated at all, were controlled more commonly by prerogative action than by positive law.[65] Secondly we find that two of the Leeward Islands, Nevis and St. Christopher, attained some success, even in the eighteenth century, in regulating their fees by local laws, but the other two, Antigua and Montserrat, had to remain content with prerogative control.

§6. Assembly Organisation

Another important field wherein positive law attempted, though only with partial success, to supplant the prerogative, was that of Assembly organisation and control. By the terms of the vice-regal commission the Governor and Council had always been given full discretionary authority to summon Assemblies of the freeholders, and to make laws in conjunction with them. Further, the Commander-in-Chief was given unrestricted powers of adjournment,

prorogation and dissolution. The control which a governor was intended to possess was modelled upon that wielded by the Crown over the House of Commons. A governor, by virtue of the freedom allowed him in the issue of writs, was legally able either to increase or to decrease the representation permitted to any towns or parishes within his domains. Moreover, by his powers of prorogation or dissolution he was able either to cut short or to prolong an Assembly at his personal discretion. The imperial authorities viewed with hostility[66] any colonial law which, by setting restrictions either upon the membership or upon the continuance of Assemblies, sought to impair a governor's freedom of action in these respects.

In the West Indian colonies, as well as in the other provinces of the old Empire, the representatives tended constantly to chafe at the arbitrary control which a despotic governor could employ. During the seventeenth and eighteenth centuries therefore, numerous Acts were passed for the more uniform regulation of Assembly membership and duration. A short sketch of the passage, the substance, and the ultimate fate of these laws will help us to see the extent to which the discretionary control enjoyed by West Indian governors over their Assemblies came to be reduced during the period of our review.

It was in Barbados that the Assembly first sought to regulate the terms of its own existence by a law of its own making. Barbadian experience during the Commonwealth period had shown the islanders the extreme inconvenience of allowing their Assembly an unrestricted tenure of office. Past Houses had remained so long in existence that they had sometimes ceased to represent the voters who had placed them there. During the brief governorship of Sir Thomas Modyford (1660) a change was decided upon: a law was passed to which the Governor assented, whereby the duration of all future Assemblies was strictly limited to a period of one year.[67] The Act was not unduly restrictive. It did not interfere with a governor's right to dissolve the House within a shorter period if he so desired, nor did it oblige him to summon an Assembly at all if he wanted none. This law of 1660 continued permanently in operation, although its existence was threatened temporarily in 1706, when a Triennial Act was passed to supersede it. But the speedy disallowance[68] of the new measure at once revived the old, which continued in full force for the remainder of the eighteenth century.

Onwards from the time of Governor Atkins (1674-80) the Barbadian legislature began to pass periodical laws to define electoral qualifications and to regulate the conduct of elections.[69] When under the Board of Trade these Acts came in for closer scrutiny,

they were found to be generally useful and quite proper to be confirmed.[70] Finally in 1721 was passed the final Act of the series, which remained in operation for the rest of the century. It enacted a complete set of regulations for the conduct of elections, from the issuing of the writs to the making of the returns: it stipulated that all disputed elections should be judged only in the Assembly, and established a minimum qualification for both elector and candidate. It made no stipulations concerning the numerical composition of the House. This was doubtless thought to be unnecessary, since the Assembly from the days of the Commonwealth itself had always been made up of twenty-two members, elected two from each of the eleven parishes. This new law did, however, provide that the presence of any twelve members would be a sufficient quorum for the conduct of business.[71]

Thus by the early eighteenth century the discretionary authority of a Barbadian governor over his Assembly had become in many respects seriously curtailed. His power indefinitely to prolong a complaisant House was summarily withdrawn: his power to alter its numerical composition had from the force of custom become void, whilst that of making discretionary rules for the qualification of electors or the taking of votes was completely superseded.

The Jamaican Assembly did not have the advantage of Commonwealth precedents in the formulation of its early claims and privileges. The pioneer Assembly summoned by Sir Charles Littleton met only in January, 1664, and lasted little more than four months, as also did Modyford's one and only Assembly that met in October of the same year. No law or regulation governed the holding of these early Assemblies, to specify how many should compose them, what districts should elect them, or how long they should last. These things were left to the discretion of the Governor and Council. As a result the composition of each House varied somewhat and sessions were capriciously short as well as infrequent.

Littleton's Assembly had twenty members, Modyford's and Lynch's first one (1671) only eighteen; Lynch's second one (1672) had nineteen. The representatives in 1674 thought this number insufficient and asked Lynch to increase it, but he refused, suggesting instead that the Assembly itself frame a bill to specify its own composition. The House did so, laying down that all future Assemblies should consist of three members each from Port Royal and St. Catherine's, and two from each of the other parishes. The Lieutenant Governor and Council passed this into an Act, and since laws passed in those early years lapsed after two years unless

they had been specially confirmed in England—which never happened so far as Jamaican laws were concerned—this measure was re-enacted[72] from time to time until at length in 1683 it was confirmed for a period of twenty-one years in recognition of the Assembly's grant of a Liquor Impost of the same duration. Finally, it was permanently confirmed when the Impost was made perpetual, and remained the basic law regulating the composition of the Assembly throughout the whole of our period. By 1675, too, the House had gained the right to choose its own Speaker, draw up its own rules, and decide for itself the merits of all disputed elections,[73] and had thus assumed in most respects the shape by which it was ever afterwards to be known.

The manner of holding elections, the formalities to be observed, and the provision of safeguards against malpractice were naturally the concern of every honest representative, and the perpetration of a number of election abuses in the early eighteenth century induced the legislature in 1716 to pass an Act to regulate the conduct of elections, which was, however, disallowed in England on account more of legal defects than of any objection to its principle.[74] Several years later the House therefore returned to the matter[75] and in 1733 passed another *Act to secure the freedom of elections* which, being devoid of defects, was allowed to "lie by" indefinitely in England. It stipulated the way in which the writs should issue and the poll be taken, prescribed the forms of property oath to be taken both by voters and by newly elected Assemblymen,[76] and laid down safeguards against various forms of electoral interference. Although amended in small respects in 1756 and 1760 it remained the law of the island for a further half-century until superseded in 1780 by a more comprehensive measure which imposed greater safeguards against wrongful election practices but left most of the other details, including basic property qualifications for both electors and elected, practically unchanged.[77]

But if the Crown took little exception to Assembly Acts seeking merely to regulate election procedure and other matters, it took strong exception to any measure that sought to restrict its right to call Assemblies whenever it pleased and retain them for as long as it liked. After the first few years[78] the Jamaican governors, on account of financial need, could hardly avoid giving Assemblies regular opportunities of meeting; and they were strongly tempted whenever they met with a complaisant House to retain its services for as long as they possibly could. Fortunately for Jamaican liberties the number of really agreeable Assemblies was extremely small, and most

Assemblies were therefore of only short or moderate duration. The record for the life of a single House is that of the Assembly that met for the first time on 9th March, 1736, under summons from President John Gregory, and lasted until 13th July, 1745—a full nine-year period during the bulk of which Edward Trelawny was governor. In all it met for no fewer than twenty-three different sessions. But this condition of affairs tended to produce its own remedy. The members themselves grew tired of this interminable House and in 1741 passed an Act to limit the duration of all future Assemblies to three years, and withheld supplies until Trelawny and Council consented to it. The English authorities took an excessive time to consider the measure and only in 1749 did the Board of Trade finally report against it, giving as reasons not only the restriction that it imposed on the prerogative, but also the objectionable means which the House had used to secure its passage and the fact that it had stubbornly refused to insert a suspending clause[79] in it. It was finally disallowed in 1752.

Greatly discouraged, it was a considerable time before the House again took the matter up, but finally, in 1778, it passed a bill limiting the duration of Assemblies to seven years. Governor Dalling refused his assent because it contained no suspending clause, but he sent a copy of it to England with a request for directions how to act if it should be repeated. The legal adviser to the Board of Trade raised no objection to this, but it does not appear that Dalling was ever informed of this. When, therefore, the House the following year passed a practically identical bill and showed signs of truculence, the Council let it through and advised Dalling "for peace and quietness sake" to give it his assent—which he did.[80] The Act was not really approved in England, but was considered harmless enough to be allowed to "lie by" and so passed into indefinite operation. The victory, therefore, was won, and Jamaica joined the ranks of the more fortunate colonies which had succeeded in imposing a limit to the prerogative in this important particular.[81]

The first inhabitants within the Leeward Islands to attempt the passage of an electoral law were the planters of Nevis. In 1672 they passed an Act which, besides giving each parish a right to elect two members, also sought to restrict the Assembly's continuance to a period of twelve months. This measure remained in force only two years, after which it automatically lapsed on account of non-confirmation.[82] Nearly thirty years elapsed before a further electoral law was passed, this time to increase the parish representation to three members, and to provide that an attendance of eleven members

would constitute a quorum.[83] As yet no property qualification had been set for either candidate or elector; this was partially remedied by a supplementary Act of 1736 which ordained that all future candidates should possess a freehold estate of thirty acres, or other property to the annual value of not less than £40 current money.[84]

The neighbouring island of St. Christopher likewise succeeded in passing some Acts by which the local Assembly might be protected from governmental interference. By 1711 a law was passed restricting the franchise to British or naturalised adults possessing ten acres freehold or a house of the annual value of £10. This qualification was the same for both elector and candidate. In future, too, Assemblies were to continue for no longer than one year.[85] This in the turmoil of the times seems to have been overlooked in England, and so was allowed to continue in operation until repealed by a subsequent law passed in 1727 for the purpose of extending the franchise to that portion of the island which had been ceded from the French at the Peace of Utrecht.

By this new Act the membership of the House was increased from twelve to twenty-four, which were definitely and unalterably proportioned among the various parishes. The new quorum was established at fifteen. New electoral qualifications were appointed for both candidates and voters, and Assemblies were again limited to a period of one year. Moreover the Chief Judge of the Common Pleas, the Chief Baron of the Exchequer, the Secretary, the Provost Marshal, the Treasurer, and other revenue officers were made ineligible for seats in the House, although they were apparently still allowed to vote.[86] The Act was not enthusiastically received by the Board of Trade, which found many objections to it. Nevertheless, because of its importance it was allowed to "lie by", and so continued in operation throughout the remainder of the century.[87]

Less fortunate, however, were the sister islands of Montserrat and Antigua. They too made attempts to establish their Assemblies upon the positive foundation of known laws, but in each case they overstepped the bounds permitted by the Board of Trade. An early Montserrat electoral law, which was not otherwise improper, was disallowed because it sought to dispense with the oaths of Allegiance and Supremacy as necessary voting qualifications within the parish of St. Patrick.[88] The inhabitants at the time of Governor Hart again turned their thoughts to the same problem, but the differences of opinion within the legislature prevented their plans from maturing. Yet again in 1748 the Assembly attempted the passage of an electoral law, but the same disruptive forces destroyed a second time all

chance of agreement. The matter demanded urgent solution. The parish of St. Anthony for a long time had been most inadequately represented and was clamouring for electoral readjustment. When therefore in 1748 the House, convulsed by faction, threw out the bill designed to remedy the situation, Governor Mathew could tolerate the position no longer. Instead of continuing further to respect the constitutional susceptibilities of the people, he determined to have resort to his still unrestricted prerogative powers. He dissolved the House, and of his own authority issued additional writs giving representation to the hitherto unrepresented towns of Plymouth and Kinsale. Many of the planters were loud in their complaints against his action, but a wiser group conceded the legality as well as the justice of his decision.

When the new Assembly met, its members had the good sense to accept the position as they found it. They straightway proceeded to pass a bill to lend legislative foundation to the step.[89] They defined minimum property qualifications for both voters and candidates, restricted the duration of each Assembly to a period of three years, and enacted that within four months of a dissolution the Governor-in-Chief should issue new writs for a successor. The Treasurer was excluded from membership, and the presence of any seven members was ordained a quorum sufficient for business. When this Act was sent home for the perusal of the Board of Trade, the absence of the requisite suspending clause was at once noticed, and this omission led to its immediate disallowance. It is extremely doubtful, however, whether the Crown would ever have confirmed so restrictive a measure, even if its passage had conformed to the requirements of the Instructions.[90] After this failure the island seems to have been content to let the matter slide.[91]

The Antiguan planters were just as unsuccessful in their endeavours, and in some ways it must be admitted that they were singularly unfortunate. As early as the time of the elder Codrington, they embarked upon legislative regulation of Assembly sessions. We know that in 1693 they passed a measure appointing both "the number of Assemblymen and the manner of electing the same".[92] This was superseded in 1697 by a more radical law which was, however, disallowed in 1700 upon the ground that, by obliging the Governor to summon an Assembly at least once every year, it infringed too much "the powers which his Majesty had been pleased to confer upon his respective Governors".[93] When the same agitation for an electoral law was revived during the administration of Daniel Parke, the latter, by opposing some of its clauses, successfully

obstructed its passage.[94] Consequently it was not until 1718 that the Antiguan legislature passed a further Act both to define electoral qualifications, and to declare the privileges of the Assembly. This measure failed to meet with the approval of Richard West, the newly appointed legal adviser to the Board of Trade, and was in due course rejected. By its terms the Antiguan House had laid claim to privileges in excess even of those enjoyed by the House of Commons in England—which pretensions were considered far too "exorbitant" to be indulged.[95]

The disappointment felt at the loss of so valuable a law left the islanders permanently discouraged. Not for another forty years was another electoral measure mooted. But in 1761 the spell was broken with the appearance of a bill designed both to establish modes of election, and to set limits to Assembly duration. It was finally passed and assented to by Governor Thomas, but without the inclusion of any suspending clause. The inevitable again occurred: the Board of Trade, incensed at this neglect, and considering the measure too restrictive of the Governor's authority, called to mind the Montserrat Act of 1749, and subjected this Antiguan law to a similar fate.[96]

From all these considerations it is clear that the authority still possessed by a late eighteenth century governor over his Assemblies varied considerably from island to island. His control over those at Montserrat and Antigua in 1783 was legally still unfettered, while in Nevis it was only his power of altering parish representation which had been taken away. In Barbados, Jamaica, and St. Christopher, on the other hand, his authority over the representative body had become so reduced, that the powers of adjournment, prorogation, and dissolution within the limits of its restricted duration were the only discretionary powers he still retained.

Chapter V

FINANCIAL ADMINISTRATION IN BARBADOS

§1. Introduction

The representative system which, prior to the nineteenth century, was so characteristic a feature of English colonial government, was a system which provided material in plenty for constitutional strife. All students are agreed that the root matter upon which all major questions constantly impinged, and which so frequently proved the deciding factor in a dispute, was the subject of finance. All administration necessitated the expenditure of money, and the degree to which a popular House controlled finance determined that to which it controlled the whole administration.

The financial systems of Barbados, Jamaica and the Leeward Islands differed sufficiently to justify their separation into different chapters of this work.

§2. Procedure in Tax Legislation

From very early times the Barbadian planters had claimed that the people's consent was a necessary condition to the legality of all taxation. In the Articles which they extorted from the Parliamentary forces under Sir George Ayscue in 1652 they had inserted a clause to safeguard their liberties in this respect.[1] Ever afterwards this became one of the major articles in their constitutional creed, to be maintained at all costs; any infringement of which provoked their sturdiest opposition, as Francis Lord Willoughby found to his cost when, during the period of his second administration (1662-6), he sought to extort from them a tax which they considered to have been illegally procured without the Assembly's consent.[2]

From this it was but a short step to the claim that in the lower House lay the sole right to grant money for the public use. This demand, first put forward with rather uncertain success in 1674,[3] was fully vindicated in a subsequent dispute which arose early in the governorship of Sir Richard Dutton.[4] From this time onwards

the Assembly remained the sole originator of money bills, though for sixty years more the Council preserved its right to amend. But the disputes between Council and Assembly in 1740-1, which took place primarily over the Assembly's claim to participate in the issue of the public money, were instrumental in bringing into review the whole question of tax legislation. The lower House now denied the Council's right even to amend money bills, and the popular enthusiasm provoked by that struggle spelt sure defeat for the Council's pretensions. Although it was the Assembly which capitulated on the major issue by dropping the objectionable bills and introducing others in their stead, yet on the really no less important question of tax amendment it was the Council which gave way. From this time onwards the sole power left to the latter in the matter of tax legislation was that either of complete acceptance or rejection.

The manner of raising supplies in Barbados differed very greatly from that which obtained in England. The difference reflects accurately the different psychological attitudes obtaining within each country. Whereas in England the Commons raised money only when definitely asked to do so by the Crown, the Island Assembly raised fresh or continued old taxes without any such corresponding demand from the Governor. In the former the whole administration of finance was regarded as the private business of the King, and the Commons with reluctance voted additional supplies: in the smallness of the island the financial administration seemed as much the interest of the Assemblymen as the business of the Governor, and the maintenance of public credit—in other words, a full treasury—was regarded primarily as the concern of the Assembly itself.[5]

In accordance with this spirit we find that, while supply often was raised at the express demand of the Governor,[6] it was also sometimes raised upon the initiative of the House itself. The coffers being empty and the public debts voluminous, the Assembly more often than not would take steps entirely of its own accord to raise a tax for remedying the situation.[7] The Excise being on the point of expiry, it required no express demand from the Governor that it be continued: the Assembly, fully conversant with the circumstances, would introduce a new measure simply as a matter of course.[8]

This power of being able to introduce tax bills without any previous vice-regal request occasionally gave rise to most unusual situations, one of which occurred towards the close of our period. In 1774 the Barbadian *Excise Act*, which previously had been always a temporary measure, was inadvertently passed in a form which erected it into a permanent law. A year or two later the representatives,

becoming dissatisfied with the manner in which they had appropriated the moneys arising from that Act, made repeated attempts to introduce fresh measures, calculated both to alter its appropriation terms and to destroy the permanence which attached to it. These fresh Excise Bills were introduced into the House, not in answer to any previous demand from the Governor, but directly contrary to his wishes; for he himself was quite satisfied that the Act of 1774 should remain in full force.[9]

Seldom indeed did the Governor and Council ever submit to the Assembly any estimates of the cost attaching to any work or service which they might propose. Nor were there any "official" members of the lower body, through whom the wishes of the Executive might informally be conveyed to the representatives. Consequently, in estimating the probable expense of any service which the Governor had recommended to them, the representatives had either to compute the probable costs as best they could, or else arrange for a body of commissioners comprising members of both Houses to deliberate upon the proposal, and suggest how much required to be raised.[10] The sum having been ascertained, the Assembly would depute some of its members from the commission to prepare and bring in the requisite bill, which having in imitation of English procedure survived three readings, would be passed on to the Council. In the last named a further three readings would be taken. In the event of amendments the bill would be sent back to the House, which could either accept or reject them. Conferences were frequently held, and not until complete agreement was reached could the measure finally pass into an Act.

But not all public works and services required the sanction of a full legislative Act. This, with the wearisome details which it entailed, was reserved entirely for matters of heavy expense. In countless instances of more trifling expenditure, it was purposely avoided. Instead, the Assembly would pass a simple resolution, agreeing that the suggested service be carried into execution at the public expense.[11] This simple resolve—evidence of the understanding arrived at between both Houses—was deemed a sufficient authority for the conduct of all such works.

Governor Robinson in 1746 strove to follow a more correct constitutional procedure in asking the Assembly for supplies, when he submitted to it a lengthy estimate of all the works which he judged to be necessary, together with a table of their probable cost. The proposed expenditure according to his computation amounted to over £11,000. This table of Estimates was laid before the

representatives in the hope that they would proceed to consider ways and means to meet the proposed charge. They, however, were far from pleased with this new method of demanding funds, besides which they resented being asked to raise so large a sum upon the foundation of Estimates which did not describe in meticulous detail every item of the proposed expenditure.

Deputy-Speaker Harrison expressed his astonishment that "his Excellency could . . . possibly conceive that the gross calculates he . . . mentioned in his message . . . could be the least satisfactory to the House, or engage them to raise a levy for the fortifications till they had fully considered of every particular that was recommended and proposed to be done, not in a cursory and general, but in the most exact and particular manner possible". The representatives thereupon threw overboard the Governor's primary need for a large fund for fortifications, as also his Estimates, and proceeded instead to consider the question of raising supplies to extinguish the existing public debt, and to provide a fund for future general purposes. In doing this they resorted to their usual methods of the past. From a table of figures submitted to them by the Treasurer, they computed the amount of the existing debts, and, using that as a foundation, proceeded to raise a new poll tax.[12]

Robinson had learnt his lesson. He never again tried to repeat this method of asking supplies. When only a few months later he had further occasion to address the House upon the "great decay of your Town Hall and Common Gaol" he ventured only to recommend these objects as "incidents you will have in view while you make an estimate of the current services".[13]

The raising of supply, the estimate of what was thought necessary to be raised, and the actual determination of the character and rate of every new tax were all regarded as the primary concern of the representatives: so also was the manner of its appropriation very largely their business, especially when after 1740 the Council was bereft of its right to amend.

§ 3. Appropriation, Audit and Issue up to 1685.

The methods by which the legislature appropriated the proceeds from every tax to the particular purposes for which it was raised is worthy of the closest attention, since it gave rise to a number of consequences of the greatest possible importance to the island. We have already described in Chapter I how the islanders of pre-Restoration times appropriated their tax proceeds: how they raised

them by an Act of the legislature and spent them only upon purposes sanctioned by the mutual resolves of each House. As the Barbadian Council stated in 1661, every tax was raised "by the common consent of the Council and Assembly . . . and disposed of by the same consent that raised it".[14]

During the administration of Francis Lord Willoughby (1663-1666) it is certain that the Governor resorted to more arbitrary means both of raising and of spending public money. His high-handedness created such revulsion among the planters that his successors in office were forced to return again to the practices and principles of the old constitution. Not a penny would the islanders yield to them, until they had subscribed to a declaration promising for the future that the island would "be governed according to the laws of England and the constitution and laws of this place and not otherways, anything heretofore . . . seeming to the contrary notwithstanding".[15]

The records of the next seven years are not conclusive[16] concerning the degree to which the island legislators returned to the appropriation methods of their predecessors. It is probable that the governors did not at once give up the discretionary spending power which Francis Lord Willoughby had gained for them. It is clear, however, that by the arrival of Sir Jonathan Atkins in 1673 the old financial methods were again in operation. Henceforward until the advent of Governor Dutton all taxes were raised by the mutual consent of both Houses, and the proceeds were from time to time appropriated to just those purposes which both agreed to support. The Act which raised them contained merely the broad condition that all proceeds be employed "for the defraying all . . . necessary and public charges as the Governor Council and Assembly shall direct and not otherwise".[17]

The Governor and Council had therefore no authority to spend even a penny of the money before they had first approached the Assembly and secured the latter's consent to every particular piece of work which they desired to undertake. This in effect obliged the Council to take the representatives into confidence over all works of executive concern which necessitated public expenditure. Only when the latter had fully considered and agreed to a proposal could the work be executed. From this authorising power which they possessed the representatives gradually came to arrogate to themselves a definite executive jurisdiction. Instead of merely concurring in a proposal sent down from the Council, they progressed a step further and commenced to join with the Governor and Council in giving

the actual order by which the proposed service was to be set on foot. It is abundantly clear that Atkins was quite satisfied to allow them this encroachment into what should have been more properly his province and his alone.

In 1678 a mariner, Captain John Poines by name, put forward a series of proposals to the Governor, Council and Assembly, in which he asked that public assistance be given to him in a task which he contemplated, of making a safe anchorage for shipping out "of the creek . . . that runneth by the town of St Michaels". The three branches of the legislature decided that his scheme was worthy of support. Thereupon it was "ordered by his Excellency, Council, and Assembly, that Colonel William Bate, Colonel Richard Guy, Major John Hallett, and Captain John Johnson . . . do cause to be hired . . . so many boats as they shall find needful, and a convenient number of working negroes as the said Poines shall desire, not exceeding one hundred, to be by him employed about the work of the haven aforesaid, . . . to continue thereon for three weeks; and for the charge thereof the said [committee] . . . are to draw upon the Treasurer of the Excise, who is hereby required to pay the same".[18] All through the years of Atkins' administration this type of joint "order" continued to be a characteristic feature of appropriations.

Moreover the Assembly, not content solely with a power of authorising expenditure, claimed also a share co-equal with that of the Governor and Council in the actual issuing of money from the Treasury. This, too, was a power which had belonged to them during Commonwealth days,[19] though it must have been denied them in the early Restoration government of the first Lord Willoughby. By Atkins' time, however, they had regained it even more completely than before.

That this was ever allowed them was due largely to an ambiguity which attached to the meaning of the word "disposal". The representatives claimed that their consent was necessary to the "disposal" of all public money. This might mean merely that their approval was an essential condition to its appropriation to specific uses, or it might mean that their consent was necessary to the issue of all warrants upon the treasury for the actual payment of creditors' accounts. To make perfectly sure of their position they claimed and were conceded both rights. We have already seen how their consent was made necessary for the authorisation of all works: a perusal of the relevant records of the period shows also that all claims upon the treasury—"public accounts" they were called—had likewise to be examined and passed by the House before any order or warrant

could issue upon the Treasurer for their payment.[20] Such warrants were issued upon the joint authority of Governor, Council and Assembly, and were presumably countersigned by the Clerk of the House or the Speaker as evidence of their having passed the scrutiny of that body.

Atkins, in informing the Lords of Trades and Plantations of the financial procedure followed within the island, gave so concise a description of it that his report is deserving of quotation. "As for the levies of the country", he wrote, "they make them according to the emergency of the occasion, sometimes more, sometimes less; sometimes upon lands at so many pounds of sugar per acre, upon negroes at so many pounds per head, and sometimes upon coppers and stills as they find it most agreeable . . . to the people's convenience. When 'tis passed the Assembly they bring it to me and the Council. If the Council approve it, they request my concurrence, and if there be nothing repugnant to his Majesty's interest, I confirm it. This being made law it is published in the churches the Sunday following. For the collecting of it there is a day set down in the Act for every one to pay their sugars in upon a penalty; the same Act appointing collectors, receivers, and Treasurer. There is not one penny issued out of it but by order which must first pass the Assembly, then the Governor and Council, though it be for the smallest sum; which orders so approved are recorded by the Clerk of the Assembly and in the principal Secretary's office, that the people may know what becomes of their money."[21]

But the latitude enjoyed thus far by the Assembly was soon to be withdrawn. The Lords for Trade and Plantations had learned from experience how prejudicial such a popular freedom had been to the personal authority of the King's representative in all royal colonies. Greater discretionary control over the field of finance must be given to all governors if they were to be prevented from becoming mere title heads of petty colonial administrations. Sir Richard Dutton, appointed in 1680 to succeed Sir Jonathan Atkins in Barbados, carried across with him powers which were destined to work considerable alteration in the financial procedure of the island.

His commission directed that any money henceforward to be raised by any Act was to be devoted solely to the purposes "which such Act should appoint" but it was to be paid out from the treasury solely upon warrants under the Governor's hand, issued with his Council's consent. An article of his Instructions further abrogated the Assembly's right to pass accounts prior to payment, and ordained

that for the future the sole privilege to be allowed the lower House would be that of examining accounts only after the money had issued for their payment. The new Instruction was technically quite constitutional. The Assembly thenceforth was to be allowed only the right to appropriate all supply to definite purposes: the Governor and Council within the limits of such appropriation terms were to exercise a free spending power; while the representatives were enabled to examine into the accounts of such expenditure in order to satisfy themselves that no money had been misapplied.[22]

The new Governor did not lose any time in putting his instructions into effect. He insisted upon the full employment of all his new powers. He definitely claimed his constitutional right to have the financial administration within his own control, and pointed out that his claim did not endanger the Assembly's liberties. "The power his Majesty hath granted me", he said, "is so confined that I cannot issue out any moneys but according as it is appropriated by the uses in that Act by which it is to be raised".[23] He showed by his words that he realised quite clearly the constitutional limits as well as the rights of his position, and the Assembly, despite considerable discontent, knuckled down to his demands.

During his governorship we find that long and detailed appropriation clauses for the very first time became included within all tax acts.[24] Within the limits of these, the Governor and Council enjoyed a perfectly free hand in authorising expenditure on works and services, and in issuing money in payment for them. If money was required for some purpose not covered by the appropriation terms of existing tax Acts, special application had to be made to the Assembly in order to secure their concurrence in the proposed expenditure, and to induce them to pass a special Act to sanction it.[25] It does not appear during Dutton's administration that money was ever appropriated by the authority of joint resolution alone.

All warrants for the payment of money out of the treasury were signed—as the commission directed—solely by the Governor, and issued with the consent of the Council. Even the salaries of the Assembly's Clerk and Marshal, which had hitherto been paid by the Treasurer upon warrants from the Speaker alone, now came to be paid only in obedience to orders properly issued under the Governor's hand.[26]

The revenues of Barbados were drawn from two sources. The first was a duty—termed an Excise—imposed on all imported liquors. This was not a permanent tax, but under ordinary circumstances was automatically continued from year to year. Thus it came to be

regarded as a sort of semi-permanent tax, which kept the treasury constantly supplied with a certain quantum of money, which, although insufficient to meet the complete annual charges, was nevertheless generally sufficient to meet the costs of defence and certain other regular expenses.[27] All further expenditure of a kind not covered by the Excise, had to be specially sanctioned either by a special Act, or by a resolution of both Houses.

Moreover, the Council and Assembly were quite prepared to authorise such additional expenditure even when there was not sufficient money actually present in the treasury to defray it. By mutual resolve they would readily agree to the prosecution of special public works or services, and yet take no immediate steps to raise fresh funds from which to pay for these. Some enterprising contractors[28] could generally be found willing to undertake these works, who upon completion of their tasks would send their accounts in to the Council for payment. The Governor would then issue warrants in payment of such claims. Since, however, there was yet no money in the treasury appropriated to this use, the contractors were forced to keep these orders in their possession and wait patiently until the legislature should care to raise a fresh supply of revenue from which they could be satisfied.[29] When this volume of clamouring creditors grew too great to be any longer ignored, the Assembly would proceed to the levy of a special property tax, to create a fund sufficient to pay off all existing creditors and leave a more or less reasonable balance for meeting the needs of the immediate future. This property tax—levied upon negroes, land, or other property—was the second main source of island revenue.

Dutton's abrogation of the Assembly's right to join in the inspection of public accounts prior to the issue of money in payment, made it all the more necessary that its right of audit subsequent to payment should be made more effective than it had been in the past. From comparatively early times we know that the House had enjoyed a somewhat desultory right to set up a committee to inspect the Treasurer's books.[30] But from the advent of Dutton this committee came to have a more permanent existence. It was composed of a small group of members chosen from each House. Its chief function from a constitutional point of view, was the examination of the Treasurer's books in order to prevent misapplication of the public funds, and to keep the legislature periodically informed of the existing state of the public credit.

In addition it possessed the full and apparently exclusive power of being able to sue tax defaulters for the payment of their dues. From

Dutton's time onwards the committee became a permanent part of the financial machine.[31] Its chief functions continued almost unchanged throughout the succeeding century. It became customary for it to play a very important part in the raising of all fresh supply. When the existing volume of public debt grew too great to be tolerated any longer, it was the committee of public accounts that informed the House of the situation, and by presenting a concise statement of the financial position, provided the representatives with sufficient data upon which to base new taxation.[32]

§ 4. Appropriation, Audit and Issue after 1685.

The new and strictly constitutional management of the finances which was begun by Dutton, worked quite satisfactorily throughout the period of his own vigorous administration; but his successors, Stede, Kendall, and Russell, all met with renewed Assembly opposition over the manner of issuing money from the treasury. It will be remembered that during the governorship of Sir Jonathan Atkins the Assembly had exercised a very close control over all payments made for the public services. Where they had considered a charge to be exorbitant they had not hesitated to reduce the amount to be allowed for it, or even to disallow the claim altogether. Thus they had been able to keep a tight check over all rash or improvident expenditure. But the new order of things inaugurated by Dutton destroyed their power in this respect. Within the restrictions imposed by the appropriation terms of each tax Act, the Governor and Council could—if they so desired—spend lavishly and in excessive amounts, without the Assembly's possessing any effective redress. For to discover any evidence of misapplication only after the money had been spent, was like discovering the stable door open after the horse was gone.

Accordingly the House began to yearn for the freedom which had belonged to it under Dutton's predecessors. It pressed hard to be allowed again the right of inspecting and settling public accounts prior to payment being made. Governor Russell, addressing the Lords of Trade upon the subject in 1695, referred to the terms of his commission whereby he was given exclusive power to issue the public money, and stated—"But this is a power the present Assembly will not be contented with, for they have vigorously expressed that no money shall be disposed of by myself and Council without their approbation, and that the Treasurer shall be accountable to them,

and pay no money but by order of their Clerk."[33] Such a popular claim to an active share in the issue of all public money was hotly contested by both Governor and Council. In vain did the House attempt to gain its object by the insertion of a special clause within successive tax bills. The Board invariably deleted the offending article, whereat the representatives—faced with the threatened collapse of the revenue—unfailingly desisted in their attempts.

But although the Board was generally successful in resisting the Assembly's claim to a complete participation in all issues, it could not prevent its encroachment in certain particular instances, which may here be described. The Liquor Excise Acts had always provided for the granting of a rebate to those merchants who, having paid the duty on their imported liquors, later discovered them to have turned sour. In the days of Atkins every such claim for rebate was forced to secure the approval of the Assembly as well as the Council, before it could be allowed. Dutton, however, had insisted that the dispensation lay completely within his own control, and during his administration all such petitions were granted or refused solely upon his and the Council's authority. But by 1700 the representatives had regained the right to share in the allowance or rejection of these rebate claims. Their jurisdiction in this respect was tantamount to an inspection of certain claims upon the public treasury previous to the issue of money for their satisfaction. Furthermore it had become customary for the Governor and Council to make payment of salary to the servants of the Assembly, only when they had received an address from the House certifying the amount which was due.[34]

The greatest encroachment of all, however, was effected in a different manner, which must be clearly understood, if the numerous struggles that later flowed from it are to be fully comprehended. It will be remembered that during the governorship of Atkins the Council and Assembly used frequently to appropriate moneys to different purposes upon the authority of mutual resolution, but that Dutton denied the legality of this system and apparently insisted upon legislative appropriations as the correct constitutional method of expressing such approval. During the administrations of his successors however, the tendency towards appropriation by mere joint resolution became again apparent.

During the French wars of the late seventeenth and early eighteenth century, Barbados was frequently alarmed by the appearance of French privateers who did considerable damage to the shipping of its ports. As a result of this, governors were often tempted to press sloops into the island service for the pursuit of such marauders.

But no terms in the existing tax Acts sanctioned such expenditure. In consequence, whenever the Governor wished to fit out a sloop he was forced to make special application to the Assembly for authority to bear the costs out of the treasury. The representatives commonly sanctioned such expenditure by the mere passage of a simple resolution in its favour. It became customary for the accounts of such special "resolution" expenditure to be handed down for the examination and adjustment of the Assembly prior to the issue of any money in payment of them.[35] Having passed each account as fit for payment, the House would thereupon request the Governor with Council's consent to issue his warrant upon the Treasurer for the sum concerned.

Since the tendency towards this joint resolution form of appropriation was a growing one, we find by the beginning of the eighteenth century that an ever increasing volume of accounts had necessarily to be passed first by the Assembly and later by the Governor and Council, before any payment in respect of them could be made.[36] It is clear, however, that wherever the expenditure on a certain work or service was already covered by the appropriation clauses of a tax Act, the Governor and Council still enjoyed an unrestricted right both to embark upon the task and to defray the resultant charges direct from the treasury.[37]

But before long the House began to view with disfavour even that limited degree of executive independence. By 1700 the island expenses had become somewhat formalised. Certain heads of expenditure, such as the charges for salaries or for executed negro compensation, were for such well-known and ascertainable amounts that any misapplication of public money in connection with them was almost impossible. Certain other expenses, however, such as the charge for fortification repairs, or the supply of military equipment, were so variable that they left considerable room for rash, excessive, or even dishonest expenditure on the part of the Executive. During the eighteenth century, therefore, the representatives kept their attention focused upon the problem of achieving such alterations in the financial system, that all the accounts which arose from these variable items should be submitted for their scrutiny and adjustment before any payment was made.[38] The story of their efforts is an important one, and constitutes the core of all the major constitutional struggles waged in Barbados throughout the eighteenth century.

The first evidence of the new movement is to be seen in a tax dispute which occurred in 1712. The long continuance of the War of the Spanish Succession had resulted in almost constant danger to

the island from the depredations of French privateers. So frequent had the alarms become, that the representatives had been induced to include within recent Excise Acts a clause giving to the Governor and Council a discretionary right to issue money from the treasury upon any services of emergency which it thought necessary. Temporarily, therefore, the representatives had surrendered their old right to be consulted about every such matter.

But the latitude thus given to the Executive soon came to be seriously abused. The House claimed that the Council had taken advantage of the concession to spend money upon objects which under no circumstances could be considered urgent. Since the treasury warrants for the payment of emergent services were simply blank orders containing no particulars of the work to which they related,[39] it is clear that the Governor and Council certainly did have it in their power to abuse their authority if they so desired. The representatives claimed that during the governorship of Mitford Crowe (1707-11) the gardener at Pilgrim[40] and some of his other servants had been paid excessive salaries, due to the fact that they had "constantly had their orders . . . as emergencies".[41]

In order to prevent such irregularities for the future, the Assembly, when framing a new Excise Bill in 1712, refused any longer to give the Governor and Council discretionary power to issue moneys from the treasury for emergency services. They determined to revert to the earlier practice whereby each proposal for the conduct of an emergent service had to secure the special approval of the House, before it could be carried into operation. In vain did the Council urge that the practice of the more recent years ought still to be continued. The Assembly admitted that the recent usage certainly favoured the Board's claim to a discretionary issue of money for urgent purposes, but coldly added that "the antiquity of an error" could not "plead its sanction". Deadlock ensued. The Governor in anger dissolved the House and called another. The new body adopted exactly the same attitude as its predecessor, and only after some months of controversy was the Excise finally passed in a form which yielded victory to the popular claims[42]—the new Act being passed without the clause for which the Council had striven. The representatives had learned an important lesson: that by refusing to make ordinary provision for a service by the inclusion of a "use" in the usual tax Acts, they could compel the Executive to resort to the sanction of joint resolution in its place, and so acquire a right to peruse and adjust the public accounts which would arise from such expenditure.

Some time afterwards they found the same expedient again useful. For many years the charge of supplying fresh equipment to the fortifications had been customarily sanctioned by the inclusion of a regular "use" in each *Excise Act*. The principal person upon the island who dealt in such materials was the Powder Officer or Storekeeper,[43] who, in addition to his ordinary duties, had built up a profitable subsidiary business as a sort of public contractor for the supply of military equipment. In the governorship of Henry Worsley (1723-31) the representatives began to view with suspicion the excessive disbursements which, under the sanction of the Excise terms, were being made to this officer. Because they doubted whether the public was receiving fair value for the money so spent, they decided to have all his accounts submitted for their perusal. To achieve this end, they refrained in 1727 from inserting in the *Excise* a "use" to cover his expenditure,[44] and so made their approval of his accounts an essential condition to the granting of payment.

In the following year they inserted within the clauses of a new Excise Bill, a use "for making and repairing carriages for the great guns, and for supplying each fort and platform within this island with all sorts of necessaries and utensils", but added as a condition that first "a particular account of all such necessaries and utensils be first laid before the Assembly to be by them inspected, regulated and approved of, and they thereon address the Governor . . . and Council for the payment thereof". They set similar conditions to the issue of money for the repair of the magazine, the cost of the Court of Grand Sessions, the Agent's salary, and the charges of the Attorney General.[45] The Council rejected every one of the restrictions which the Assembly thus strove to place upon them. Controversy waxed long and furious. The Council proved adamant, and the representatives, to prevent too great a loss of revenue, were finally forced to acquiesce in the passage of the Excise free from the objectionable restrictions. Worsley asked them to desist from their opposition until he had sent home a copy of the Bill, and had received the opinion of the Board of Trade upon the propriety of their claims. The imperial authorities reported very strongly against the popular pretensions, and the Excise Bill was summarily disallowed by the Crown as being contrary both to the usage of Barbados itself, "and of all other . . . [his] Majesty's colonies".[46]

The representatives had claimed that the granting of their demands would not conflict with the Governor's Instructions. He and the Council would still have the sole right of issuing the public money, despite the fact that in certain instances the Assembly's previous

"address" or authorisation would be necessary. But the speciousness of their assertions was not lost upon Worsley. "The Assembly", he wrote, "do not pretend to make out the [actual] warrants and orders for money; that *servile* part they leave to the Governor and Council: nor do they command the Governor and Council to issue orders in pursuance of their addresses, but they tell them not to issue the money for such uses until they have first addressed for it; so that notwithstanding that the Governor and Council have found it necessary for his Majesty's service . . . to employ persons at the public expense . . . and that those persons should faithfully do their duty accordingly, they shall never have an order for their money unless they have interest enough with some leading men of the Assembly to procure it for them."[47]

Though Worsley may have exaggerated a little in regard to this last portion of his despatch, it is clear that a very serious principle was at stake. Should the representatives ever gain their ends, it would inevitably follow that one set of men would be responsible for authorising the conduct of works and services, and a totally different set given discretionary authority either to grant or refuse payment for the same. Such a condition of divided authority could not be long maintained. The power responsible for giving the orders must also be capable of making the payment. Either the Governor and Council must be allowed to retain both powers; or the Assembly, in claiming the issuing authority, must in the end secure the essential power of giving the orders also.[48]

The Assembly in 1728 had been severely rebuffed, but its defeat was nothing like so decisive as the Council hoped. When once they had capitulated in their attempts to force the passage of the disputed measure, the representatives brought in a new bill, which being more satisfactory to the Council, passed the latter without serious opposition. In the new bill, however, the House carefully refrained from inserting any "use" to sanction the payment of those whose accounts had been the prime cause of the controversy. This meant that no fund was set aside from which any of these claims might be satisfied. For several years therefore the disputed accounts remained unpaid, until in the mid-thirties the Assembly took pity on the complainants, and, after having insisted upon an inspection of their accounts, consented to their payment.[49] From 1736 onwards the representatives continued, therefore, if only in an informal way, to insist as a condition of their making provision for the Storekeeper's disbursement, that his accounts before payment be transmitted to them for their inspection and address.[50]

In an informal fashion, therefore, they gradually won a considerable portion of that very jurisdiction which had been denied to them in 1728. By the year 1740 they considered the practice to be long-standing enough to claim legislative recognition. In a Levy Bill introduced late in that year they attempted to revert to all the claims of 1728, by inserting clauses in the new measure to sanction the payment of the Storekeeper's and other variable accounts only after the Assembly had first passed them and had addressed the Governor to sign the necessary warrants. Once again argument grew very bitter, and in the end the House again capitulated.[51]

But its desires, though denied attainment, continued as insistent as ever.[52] Governors Byng and Robinson took a firm stand to prevent any further encroachment. Their successor Henry Grenville (1747-53) was, however, a man of very different disposition, who early made an almost complete surrender to the popular claims. Joseph Jordan, a prominent member of the House and one of the foremost protagonists in the popular cause, who could find nothing but the bitterest abuse for Robinson, was able only a year later to move an address of praise to his successor, whose new administration "was so agreeable to what then wish'd for".[53] The *Excise Act* passed on 1st December, 1747, contained several clauses which gave the representatives a large share of that jurisdiction over the issue of public money, which had hitherto been denied to them. It proved so satisfactory to them that it was afterwards continued in its entirety by fresh Acts passed from year to year. Such a continuing Act of 8th July, 1760, still allowed many formal items of expenditure to be met direct by the Governor and Council, but in making payment for a greater number of "variable" works and services, specified that the warrants should issue *only upon the receipt of an address from the Assembly, certifying that the relevant accounts had passed the scrutiny of that House.*[54]

In a fresh *Excise Act* of 1761 the same system was continued. Many formal payments were left as hitherto to the undisputed discretion of the Governor and Council, but all payments for the naval defence of the island, the salaries of the Engineer, and the Secretary at War, the cost of public prosecutions, and expenditure upon all matters not expressly provided for in the Act, were to be made only after the appropriate accounts had been first passed by the House.[55]

The final scenes in the long struggle over the issue of public money took place in the 'seventies and early 'eighties of the century, and arose as follows. Almost throughout the entire eighteenth century the fortifications repairs within each division had been entrusted to

bodies of commissioners comprising the Assemblymen, the Councillors, and the Field Officers resident within the precinct. The care of the fortifications was thus left practically within the control of the islanders themselves, the share of the Governor having been gradually eliminated. Provision was always made in the tax Acts for defraying such expenditure as these bodies of commissioners thought fit to incur. Each group used periodically to issue a certificate to the Governor and Council, wherein they specified what moneys were owing to those at work upon their section of the defences, and the Governor would then automatically issue his warrant for the payment of all such sums.[56]

For over half a century this system of defraying the costs of fortifications had been continued without serious doubts being raised as to its effectiveness. But in the 'seventies the representatives began to suspect that greater sums were being paid out on these services than the nature of the work demanded. As a result they began to agitate that all accounts which related to this work be sent down for their scrutiny as well as for that of the Council. On 20th July, 1773, the Council was forced to reject an Excise Bill because the House had inserted in it a clause demanding that all "moneys paid for the necessary repairs of the fortifications must be addressed for by the General Assembly". Sooner than risk the collapse of revenue that would inevitably result from such a deadlock, the representatives again relinquished their claims by the passage of a fresh measure which was no longer liable to the same objection. But their action did not indicate surrender, for only five years later the matter was revived, though with similar results.[57]

Finally in 1780 in passing a new Poll Tax Bill the representatives thought fit to carry the matter to a decisive conclusion. It is clear that it was still the question of fortification repairs that was agitating them. They determined to insist that all such repairs for the future should be paid only after the relevant accounts had been examined in their House, and the Council addressed for the necessary warrants.[58] The Board stubbornly resisted the claim; the Bill was held up, and public credit practically destroyed for want of revenue.[59]

This deadlock continued for nearly three years, to the utter ruin of the local finances. Commencing a little before the arrival of Governor Cunninghame, it raged throughout the full period of his administration. The matter at stake soon departed from the original question of fortification repairs, and became a general issue as to whether or not the House possessed the power, in matters of its own choosing, to demand that the accounts of relevant expenditure be transmitted

first for its inspection and address before any money could issue in respect of them. The Governor transmitted to Lord George Germaine a draft of the disputed Bill, in order that the latter might give him the benefit of his opinion upon it, but not until the arrival of Cunninghame's successor was the imperial decision made known. *It was a complete surrender to the popular demands.*

David Parry, assuming the government in 1783, brought with him an additional Instruction which authorised him to give his consent to any tax bill, which, although not conformable to the older Instruction relating to the issue of public money, was nevertheless "agreeable to the usage and established custom and practice . . . in our said island".[60] The victory lay therefore with the Assembly. Its power to ordain what classes of accounts should be submitted for its inspection was to all intents and purposes conceded. The way was opened whereby for the future only the fixed and stable charges would be left to the discretionary issue of the Governor and Council; while all accounts relating to expenses of a more variable and unascertainable nature, would first have to meet with the approbation of the House, whose "address" would be an indispensable condition of their discharge.[61] At last therefore the Assembly was given that power of participating in the issue of public money, for which it had striven so arduously and so long.

Such a concession practically destroyed every vestige of discretionary authority which still remained to the Governor in financial affairs. For the future his issuing power would be more a mechanical formality than a substantial power. As a necessary corollary too, he would in future have to allow to the Assembly an effective participation in the conduct of all public works, in order that the House which authorised should be the House which paid.

Chapter VI

PUBLIC WORKS IN BARBADOS

§ 1. Introduction

According to the theory of the Barbadian constitution, the Governor and Council were the proper authority to whom should have been entrusted the whole administration of the island, including the conduct of all public works and services. They constituted the local Executive, into whose hands should have fallen a considerable share of island policy, and the whole field of local administration. The Assembly was correctly only a law-making body, and as such had theoretically no right to participate in administrative functions. Yet, as a result of the developments of a century and a half, we find by 1780 that the Barbadian House had come to play a very prominent part in the actual conduct of the majority of public works and services. By that time all the most expensive public undertakings, such as the repair of the fortifications, the upkeep of harbour works and public buildings, the hiring and equipping of vessels for scouting purposes in time of war, and any other matters which required heavy expenditure, had become withdrawn from the exclusive control of the proper executive, and vested instead within the hands of administrative committees chosen jointly from the Council and the Assembly. The manner in which these committees acquired their jurisdiction, and the extent to which they came to exclude the Governor from all share in their functions, will form the subject of this present chapter.

Contrary perhaps to our expectations, we find that this popular encroachment into the field of essentially executive functions was not of gradual and therefore only late development. From earliest times we find evidence of a pronounced disposition on the part of the Assembly to trespass upon the administrative field—a danger which does not seem to have been fully recognised by the Governor and Council. The smallness of the island was doubtless partly responsible for this tendency. Every planter was thoroughly conversant with the full public needs of the moment, and felt a much more immediate interest in the conduct of everyday public affairs in so limited a

sphere, than would have been possible in a larger and more complex state where relationships were more impersonal, public needs less narrowly local and individual interests more diffuse.

There was a conspicuous absence from the administration of all traditional standards, dignities, and jealousies. In this respect the island departments were very different from the corresponding English departments of state. The island Council possessed a far greater affinity for the Assembly, than the Privy Council did for the Commons. Moreover the fact that the Council besides being an administrative body was also the upper House of the legislature, tended to bring matters of purely executive concern more closely to the notice and attention of the lower House than might otherwise have been the case. The two Houses in years previous to the Restoration had not infrequently sat together for the consideration of important public matters,[1] and this coalescence had given the Assembly an excellent opportunity on occasions to participate in the discussion of matters which should more properly have been reserved for purely administrative deliberation. This helps in many ways to explain the facility with which Francis Lord Willoughby's third Assembly, when asked for an aid to supply defects in the fortifications, decided to ride round the defences themselves, and so make their own estimate of the existing requirements.[2] So, too, can we explain the action of the Council in 1671, when it established a small committee composed entirely of Assemblymen, "to agree with . . . persons for the completing a fort at Speight's Bay . . . the charge thereof to be paid by an order drawn upon . . . [the] Treasurer".[3] Such instances were as yet comparatively rare, but the very fact of their occurrence at all, goes to illustrate the extreme informality which characterised the relationships existing between the Houses at that early date.

We should remember too, that the island possessed only a limited number of public servants. All supervision of public works had to depend either upon managers hired at heavy expense, or upon public spirited citizens working for no reward. Since Barbados was far too poor to be able to afford many of the former, the demands upon the honorary services of the latter were heavy. If the whole burden of public service had fallen solely upon the shoulders of the Council, the position of each member of that board would have been onerous in the extreme. It is therefore not to be wondered at that they were only too pleased to receive the help of members of the lower House in matters of administration, since in doing so they lightened considerably the burden of their own obligations.

Finally, and perhaps chief reason of all, the representatives were always extremely jealous of the manner in which money was spent upon the public services. Not content with the power of appropriating the proceeds of each tax to its specific purposes, they were further anxious to avoid all wasteful and fraudulent expenditure in the practical achievement of those purposes. To guard against this it was necessary that they themselves be given some share in the actual management and supervision of the works in question. Then and then only would they be able to keep careful eye on each item of expenditure and so ensure that each project was conducted as economically as possible. This without doubt contributed greatly to their desire to gain a share in the superintendence of public enterprises, which the Council—as has already been shown—seemed willing enough to yield them.

§2. Fortifications

In August, 1650, very early in the first governorship of Francis Lord Willoughby, the House was appealed to for assistance in defending the then royalist island against the impending approach of the Parliamentary forces. This was probably the very first occasion upon which the island was thrown into a thoroughly efficient posture of defence. The representatives readily lent their aid by the passage of an Act exacting a heavy levy of negroes from all estates, thereby establishing a fund of labour for the erection of defensive works in all the more vulnerable portions of the island. Instead of leaving the whole conduct of the works to the discretion of the proper executive, the legislature proceeded to appoint groups of commissioners within every parish, who were entrusted with the practical conduct of the entire operations. It is almost certain that Assemblymen occupied a prominent position within the bands of commissioners thus established.[4]

This expedient served as a useful precedent for future occasions and the commissioner system of managing work on fortifications early became an established institution. In early years the Governor naturally occupied a position of some eminence within it, his right to issue directions for the guidance of the commissioners being fully and expressly recognised even down to the beginning of the eighteenth century.[5] The fact that the commissioners were thus regarded only as subordinate bodies, probably accounts for the fact that even a governor like Sir Richard Dutton readily acquiesced in the system,

while the law officers of the Crown also regarded it as quite proper for royal confirmation.[6]

Dutton apparently thought the system quite efficient, and obliged the commissioners to a conscientious performance of their duties. A *Fortifications Act* passed early in his government affords a typical illustration of the methods employed. This law compelled all planters to send a certain proportion of their negroes, fitly equipped with food and tools, to work upon the fortifications for specified periods, and also levied a monetary tax upon the inhabitants of the towns, who, possessing but few slaves, were expected to make their contribution in hard cash. It divided the island into convenient divisions, and established for each of these a committee of fortifications composed of the resident Councillors, Assemblymen, and Field Officers. These were authorised to issue their warrants for collecting the slaves, and were also empowered to draw direct upon the local receivers for the tax proceeds. With the labour and money thus placed at its disposal each group was empowered to conduct and manage the entire defensive works of its own district. The sole restriction placed upon its absolute discretion lay in the one condition that what fortifications should thereafter be "repaired, built or demolished" should "be done by the appointment . . . of his Excellency with the advice of the Council, to the commissioners as aforesaid".[7] The Act clearly illustrates the degree to which the islanders themselves were made responsible for the practical administration of the defences, the Governor being left only the power to appoint what works should be made the subject of their attention.

The same system was continued from time to time by temporary legislation until in the time of Robert Lowther (1711-17) a perpetual Act established it as a permanent element in the island administration. The new law defined the obligation of each planter to send a proportion of his slaves to assist in the work of fort repairs. Such slaves were to be levied by warrant from each body of commissioners, who were likewise empowered to exact fines for all defaults. The whole management of the works was again vested in each group of commissioners, who, as before, comprised the Assemblymen, the Councillors, and the Field Officers resident within the division. The part of the Governor was reduced almost to a mere formality. He was made responsible for setting the machine into operation. Whenever he should think repairs to be necessary, he was to give directions that they be made. Thereupon the commissioners would assume practical command, and carry out the repairs without any legal obligation to consider the Governor any further in the matter. All

expenses incurred in the works were to be certified to the Governor and Council, who were thereupon automatically to issue their orders upon the Treasurer for the issue of payment.[8]

The degree to which the management of fortifications was lapsing from the Governor's control is amply illustrated from a despatch written by Lowther to the Board of Trade in 1717, wherein he stated how the defences "were managed by the commissioners . . . in the several divisions" who spent money upon their tasks "so imprudently . . . that the public received little or no advantage from it".[9] The fact that the commissioners were by law so nearly independent, and were composed partly of persons outside his personal control, hindered any effective intervention on the Governor's part.

By the middle of the century it seems probable that the commissioners had won almost complete independence, being able to set about their business when, where, and in what manner they pleased. Sir Thomas Robinson, whose zeal for efficiency tended to outrun his discretion, felt obliged to come to grips with them over a matter which he rightly considered to be vital to the preservation of the dignity and authority of his own position. He had regarded with some apprehension the existing state of the defences, and he addressed a letter to each body of commissioners, asking them to compile a list of the repairs thought to be necessary within their division. The commissioners resented this somewhat unusual request, which they regarded as an indication that the Governor was striving to interest himself in the practical conduct of the individual forts. In consequence they were extremely dilatory in making their returns. Robinson became so incensed by the delay that he felt compelled to address the Board of Trade upon the subject. "I am obliged", he wrote, "to give your Lordships a further reason for my writing in this strain to the commissioners, for the bulk of those gentlemen . . . by oblique means gave me to understand that it was their province to order what repairs were to be proceeded upon in the several fortifications and not the Governor's; and in consequence of this position, if the Governor should take upon himself to order, they as commissioners should refuse obedience, and this they pretended was a power vested in themselves by a law of this island . . . by which they own 'that the Governor was to give orders when the fortifications should be repaired, but what those fortifications were, or how to be conducted was under the direction of the commissioners alone'." To get over their opposition Robinson, with more tact than usual, was content to "recommend rather than order" what he concluded to be necessary. No evidence now exists to show what

result flowed from this more discreet manner of address. The Governor must early have recognised that he was engaged in a hopeless task. Joint commissioner management of the forts was an institution far too deeply entrenched to be easily uprooted, unless he were given the most active support of the imperial authorities. Yet this was completely denied him: the Board of Trade's reply to his despatch gave him no encouragement; their verdict in the matter rather supported the pretensions of his opponents.[10]

New governors arriving in the island for the first time must have experienced a sense of great misgiving when they found themselves so effectually robbed of a power which, being so essential to the efficient conduct of their administration and the discharge of their responsibility to the Crown, ought never to have been withdrawn from their effective constitutional control. Henry Grenville, not long after his assumption of office, had his attention drawn to the ill state of the defences. Like his predecessor he too applied to the commissioners for details of what was needful to be done. Then he addressed the Assembly upon the need for financial aid; informed them that he would send down for their information a full statement of the requirements of each division, and concluded by assuring them that "you may confide in it that I shall give directions for applying the sums you shall think proper to raise for the use, to the completing such of them as appear to be most advantageously situated for the defence of the island". This threatened encroachment upon the acknowledged province of the commissioners met with a sharp rebuke from the representatives, who, while promising the required supplies, coldly replied that with respect to the Governor's "directions" for applying the same, "we may venture to assure your Excellency that the commissioners of the several divisions who have the power of transacting that business, will pay a due regard to your Excellency's prudent and seasonable *recommendations*."[11]

Indeed from this time onwards the Governor's influence over the commissioners must be regarded as almost purely nominal. The Council minutes of the succeeding period are completely devoid of any directions or instructions issued to the divisional committees, thereby showing that they had become virtually autonomous bodies, themselves deciding not only the details but even the times for the prosecution of their duties. Sir Jonathan Atkins when describing the state of things in 1680 had been able truthfully to assert that "I gave my orders as to repairs . . . and other matters of military defence, and they appointed their own . . . commissioners to see the work done": his successors a century later could boast no such

authority. Governor Cunninghame in 1782 informed his Council how he had "*recommended* the different boards of commissioners to . . . meet and examine the . . . fortifications and report to him thereon, and [had] *recommended* to them to have what was wanting in the respective divisions provided without loss of time".[12] The Governor's power over one of the chief departments of his administration had in fact during the eighteenth century sunk from one of command to one of mere recommendation: the commissioners of fortifications had grown from a position of subordination to one of effective independence of all vice-regal control. In other words the effective executive authority within this department had passed from the Governor and Council, and had become vested instead in special committees chosen from the legislature and the military officers of the island.

§3. Defensive Expeditions

In all other branches of the defence which entailed considerable expenditure, the same movement is to be noted. In all special undertakings, such as expeditions to neighbouring islands, the fitting out of sloops for the pursuit of enemy vessels, or the establishment of defensive works of a special nature, a tendency towards joint committee administration is a characteristic feature.

When as early as 1672 William Lord Willoughby asked the Assembly for assistance in despatching an expedition to Tobago, that body at once agreed to finance the scheme; but provided that a small joint committee of two Councillors and three Assemblymen, should be established to provide for the victualling of the forces which it was proposed to despatch, with power to draw direct upon the Treasurer for such sums as they should require.[13] Similarly in May, 1691, when Governor Kendall proposed an expedition for the relief of the Leeward Islands from the French, the representatives agreed to finance it, but suggested the establishment of a joint committee of both Houses to draw up the necessary plans and details. The Governor and Council acquiesced in this step, with the result that a joint committee of the legislature really framed the details of the whole expedition, and then reported its proposals to each House.

It recommended that a regiment of six hundred men be despatched, to be raised by an Act compelling every owner of a sugar mill to subscribe, equip, and set out one white man suitably accoutred for the expedition. For the conveyance of so large a force it was thought

that six sloops would be required. On the following day the representatives, in accordance with these recommendations, introduced into their House a bill by which to raise the men and money for the undertaking. They decided to give a joint committee of the legislature complete authority to manage the victualling and equipping of the soldiers and the hiring of the sloops, with power to draw direct upon the Treasurer for the resultant expenses. The Council agreed to the joint committee of management, but opposed giving it an independent right to draw direct upon the Treasurer. The House was persuaded to drop this part of the bill, and to substitute for it a method of payment closely resembling that already described in connection with fortification repairs. Though denied the power of drawing direct, the commissioners were empowered periodically to inform the Governor what sums they required, in order that he might issue his warrant upon the Treasurer for the issue of the amounts in question.[14] In this form the bill passed both Houses, and securing Kendall's assent, immediately became law. The jurisdiction of the Governor and Council—as the correct island Executive—was reduced therefore to a minimum. Save for the authority which they may have exercised in authorising the actual levy of the soldiers, in issuing directions to the regimental commanders, or in mechanically issuing money at the request of the commissioners, their powers were completely withdrawn. All control over expenditure and the practical direction of a large share in the enterprise lay solely within the hands of the commissioners. It is an excellent illustration of the growing authority to which the Assembly of the time was pretending.

No further expeditions upon this grand scale were ever again attempted. Had there been any such, it is almost certain that the Assembly would have continued its claim to an active share in its management. Close upon ninety years afterwards there occurred an affair, which, though related to a problem of defence instead of offence, was not dissimilar in type from the special expenditure involved in the expedition of 1691, and may suggest the degree to which the House—if given suitable opportunity—might have pursued its end.

On 22 July, 1779, Governor Hay, suspecting danger from the French, summoned the Council and Assembly before him in order to point out to them the weakness of the island defences. Amongst other things he urged that a centrally situated plot of land be purchased, for the speedy erection of a large redoubt. Such a structure, he suggested, would serve as an excellent haven of refuge in the event of an invasion. Upon returning to their own House,

the representatives resolved to undertake the work suggested. A few days later they passed an additional tax bill by which they sought not only to provide the necessary money, but also to vest the entire management of the project in a joint committee. Such a body, comprising five Councillors and seven Assemblymen, was to be given full power to purchase both the land and the materials, and to manage the whole work of contruction. A clause within the Act, intended as a sop to the Governor's dignity, enacted that he be humbly "desired to cause the island to be put into a proper state of defence, and to give the necessary orders and directions for this purpose". But it was a mere pretence: the Act straightway proceeded to grant the commissioners an independent power to draw direct upon the Treasurer for all their expenses, and so gave them an effective independence in all that they wished to do.[15]

Meanwhile, under the superintendence of the commissioners a start was made. Later in the same year Governor Hay died, and not until the middle of 1780 did his successor James Cunninghame put in an appearance. The newcomer at once came to blows with the commissioners because of the attempts he made to interfere in the building of the redoubt. It is clear that the Governor was powerless to compel obedience to any of his directions. The commissioners by virtue of their financial independence were able to scorn his orders with impunity. He complained bitterly against the action of his predecessor in "surrendering the essential right of the Governor's . . . approving the application of that fund", and resented the fact that "the whole disposition of the money was vested in a body of commissioners". In October he sent home a draft of the objectionable Act for the Board of Trade's opinion. The latter, however, failed to give him the support which he had expected. While sympathising with him the Board stated that the Act was quite in keeping with numerous others from the island which they had approved of, and that they did not think it "prudent . . . in the present very critical nature of affairs to have the question agitated, or attempt any innovation in a practice so long permitted".[16] The Governor was forced therefore to swallow his indignation and do his best to secure what he could by means of recommendations to the commissioners—a position which drove home the utter powerlessless of his position, and clearly indicates the degree to which the Assembly's participation in administrative business was robbing the correct executive authority of all effective power.

Further evidence of the same tendency is discoverable in cases where sloops were fitted out for scouting purposes in times of

special danger, in order to clear the neighbouring seas of enemy marauders. Such ventures usually necessitated special applications to the Assembly for supplies. The latter, generally ready enough to make the necessary provision, gradually began to demand a share in the fitting out and despatch of such vessels. By means of their financial influence they almost invariably succeeded in attaining their ends. In 1689 Deputy Governor Stede addressed the House upon the need for vessels to guard the surrounding waters from French privateers. The members agreed that three vessels, manned by five hundred men, be fitted out for the island service. In the Act providing for this force, a joint committee was appointed both to hire and equip the vessels, and to furnish each with its complement of men suitably provisioned and supplied with ammunition and arms.[17]

Again, a few years later during the administration of James Kendall, the Governor desired that a sloop belonging to a certain Captain Dowden be sent out for scouting purposes. The Assembly after some hesitation agreed to this, but stipulated that a small joint committee be employed to fit the vessel out. That course was accordingly followed. The Act which made provision for the venture stipulated that these commissioners should certify to the Governor a statement of all the expenses they incurred, in order that he might issue his warrants upon the Treasurer for payment of the sums concerned.[18] The Governor still retained therefore a certain measure of control over their actions, should they affect too free an interpretation of their powers. Up to this time, however, such commissioners had shown no desire to do this. They were recognised as subordinate bodies, responsible only for matters of routine importance. Because of this we find that early Acts of this nature were not viewed with any disfavour by the law officers in England.[19]

Early in the eighteenth century, however, the ambitions of the representatives took a less justifiable turn. They attempted to assume an independent right not only to take up and equip sloops for the island service, but even to appoint the commanders of such vessels. President Farmer—Acting-Governor in 1702-3—clearly perceived the highly exceptionable nature of their proceedings, and alluded to their "great presumption and invasion of her Majesty's right, . . . in manning and equipping several vessels of war, and appointing officers to command them by a committee of your own House, without even so much as acquainting me with it". The representatives lamely replied that they had adopted this course only because the Council had not been in session at the time. But

Farmer denied the validity of their excuse, reminding them that he would have been willing to call a special meeting of the Council had he been asked. They were forced to admit that their action in hiring the sloops of their own authority had been unconstitutional, but they still persisted in a claim to appoint the commanders. They threatened that only upon that one condition would they make provision for any further services of that kind. After a time, however, they had the grace to recede from this claim.[20]

Not for another forty years do we meet with a recurrence of such popular pretensions. The War of the Austrian Succession, however, brought about a renewal of the French menace; spy sloops again became necessary, and again the Assembly strove to subject such undertakings to its own independent supervision. Early in 1745 Governor Robinson recommended that steps be taken against the possible approach of the French. The representatives agreed that a scouting vessel should be taken into the immediate service of the island, and set up a small committee of their own to purchase a suitable sloop. To ensure complete independence for this committee, they ordained that it be given full authority to draw direct upon the Treasurer for all its expenses.[21] The Council, apparently owing to the extreme urgency of the circumstances, acquiesced in this irregularity. Thus emboldened, the Assembly again in the following year sent out two sloops of its own authority to cruise about the island. No special Act was passed to provide for these and no special conditions were established to govern the manner of paying for them. The accounts which related to them had therefore to pass the Council as well as the Assembly before payment could issue. But the Council no sooner received these than it challenged the authority upon which the sloops had been despatched, and refused to confirm payment until an explanation should be made. Considerable controversy resulted, as a result of which the Board agreed to pass the accounts, but they resolved never again to do so under similar circumstances.[22]

The Council was now fully awake to the danger of the Assembly's encroachments. The awakening came not a minute too soon. Even at that very moment the representatives were making a last desperate attempt to attain their goal. Robinson had requested that provision be made for another sloop. They saw in this request an opportunity of securing legislative sanction for their claim. They framed a special bill whereby, in making provision for the desired vessel, they vested full control in a committee of their own House. A body of eight Assemblymen and merchants were named in the bill to

purchase, equip, and set forth the sloop, with authority even to impress sailors into her service. It was the evident intention of the representatives to exclude the Governor from all jurisdiction whatsoever. In order to complete the independence of their committee they agreed that it should have full power to draw direct upon the Treasurer for all the charges of the undertaking. Having passed the Assembly on 10th December, 1748, the bill was carried up to the Council, which, fully alive to the pretensions of the lower House, after mature deliberation rejected it.[23]

Despite this failure the representatives refused to desist from their endeavours. They continued their agitation until, in the more complaisant administration of Henry Grenville (1747-53), they were at last admitted to the independence they had sought so long.[24] In still later years, however, they seem to have been content to surrender this exclusive authority, and to give back to the Council a right to share in the hiring and equipping of sloops, for when in 1779 Governor Hay recommended to them the despatch of some sloops upon the usual service, they at once agreed to provide two such vessels, the hire and management of which they entrusted once more to a joint committee of both houses.[25]

§ 4. Harbour Works

The final instances in which such a committee usurped the rightful place of the Governor and Council occurred in the field of more general works undertaken for the public good. Owing to the smallness of the island the government conducted many enterprises which in a larger state, or in a different age, might have been delegated to a subordinate authority such as a harbour board or a municipal council. Popular encroachment upon powers of the Governor and Council in matters of such purely domestic concern might at first seem more justifiable than many of the acts of trespass hitherto considered. In strict theory, however, this was not so: all matters which were placed—even if only for convenience sake—within the exclusive province of the island government should also have lain within the administrative jurisdiction of the constitutional executive.

An early precedent for the employment of a joint committee in the conduct of harbour works dated from the year 1678, when John Poines submitted to the legislature a scheme for the making of an anchorage at Bridgetown. The plan having met with the approval of both Houses, was carried out under the supervision of a joint

committee, which was given an independent power to draw direct upon the Treasurer for all expenses.[26] Eight years later the same harbour required further cleaning and deepening. This time a certain Captain Stewart submitted proposals both for cleansing the bar and for building piers for the improvement of the entrance. Deputy Governor Stede asked the representatives to appoint a committee of their House to meet with a committee of the Council to examine Stewart's proposals. This joint body after some delay reported to the Council what steps ought to be taken, and Stede sent down a copy of this for the perusal of the Assembly. By mutual agreement the two Houses made some minor amendments to the suggested scheme, and finally the representatives passed a bill "to enable the commissioners to agree with the said Stewart according to the import of the articles" and to make financial provision for the work. This measure passed the Council, received in due course the approval of the Deputy Governor, and on 12th July, 1687, became law. It provided for the continued existence of the commissioners as a supervisory body until such time as the work was finally completed.[27]

Early in the following century a further joint committee was set up to draw up an agreement with one Magnus Poppell who had submitted further plans for harbour improvements.[28] For some years after this, however, no more steps were taken for the advancement of the port, with the result that by the early forties the existing works had fallen into grievous disrepair. In a speech to the Assembly on 25th November, 1746, Sir Thomas Robinson made lengthy mention of the urgent need for harbour repairs. The House in reply set up a small committee of its own members to inspect the entrance, decide upon the existing requirements, and finally to secure contractors' estimates of the probable cost of the work. Preparatory reports were returned shortly afterwards to the general body of the legislature, but the Assembly finished its annual session before anything definite could be accomplished. A new House having met, attention turned once more to the harbour needs, and the reports of the previous session were revived for fresh consideration and approval. A new committee of the Assembly was thereupon established to bring in a bill for financing the suggested improvements. This measure having passed both the Assembly and the Council, received Governor Grenville's assent. It appointed a joint committee of five Assemblymen and three Councillors to contract for materials and labour, and to manage the entire conduct of the repairs. The committee was given virtual independence, by being

empowered to certify to the Governor and Council all details of its monetary requirements, which the latter were to satisfy by means of the customary orders issued upon the Treasury.[29]

Two disastrous fires which broke out in Bridgetown in 1766 did so much damage to the town, and so depleted the resources of the inhabitants, that application had to be made to the imperial Parliament for financial assistance when next the harbour works required extensive overhaul. The English authorities responded to the appeal, donating the sum of £5000 for the work. Meanwhile Captain Robert Fenwick had brought forward a plan for cleaning and deepening the entrance. On 12th May, 1772, the Assembly established a small committee of itself as a "Committee for the Molehead", presumably to examine further into Fenwick's proposals and to prepare the necessary bill for carrying them into effect. At the end of September, 1772, this was introduced into the House and quickly passed. On being sent up to the Council certain minor clauses were disapproved, and it was sent back with amendments. The representatives having acceded to these, the bill finally passed the Council and on 3rd November received the vice-regal assent. It contained, however, a clause suspending its operation until it should meet with the royal approval. Owing to some minor objections this was withheld. The Board of Trade in intimating the reasons for its rejection, suggested the passage of a fresh Act of a less objectionable nature.

Accordingly on 6th July, 1773, Henry Duke introduced into the Assembly a new Molehead Bill, which swiftly passed, met with the approval both of the Council and the Governor, and became law early in August. By this Act a body of joint commissioners was again appointed to manage the undertaking. They were given full authority to carry Fenwick's plan into execution, with power even to depart from it in any particulars which they might unanimously judge to require alteration. Once again power was given them to make all contracts respecting materials and workmen, and to superintend the construction of the entire work. In order to ensure a continuously full membership, it was provided that, should any member vacate his seat, then the House from which he sprang was to appoint a substitute. The committee was given full power to draw direct upon the Treasurer for the whole imperial gift of £5000, and also for any other moneys which the Act itself might raise.[30] The commissioners were thus given complete discretionary authority in the prosecution of the work; the correct executive—the Governor and Council—being wholly disregarded. Harbour operations dragged on for many years, with the result that the committee became

regarded as a semi-permanent institution, being still in existence as late as 1780,[31] and probably for many years afterwards.

§ 5. Public Buildings

The construction and repair of the public buildings in Bridgetown fell correctly within the purview of the island legislature, and as such should have been conducted under the supervision of the Governor and Council. The Town Hall and the public gaol were, however, first built and afterwards repaired through the agency of joint committees, acting almost independently of the Governor's authority.[32] Moreover, after Sir Thomas Robinson's rather arbitrary and spendthrift experiments in the making of repairs and additions to the Governor's residence at Pilgrim, the responsibility for the conduct of such repairs was withdrawn from the head of the Executive and vested in a special joint committee of the legislature, which was continued as a permanent body by constant re-appointment from session to session.

After the great Bridgetown fires of 1766 it became necessary to ensure that the work of reconstruction be carried out in an efficient and orderly manner as possible. A body of joint commissioners comprising five Councillors and nine Assemblymen was constituted, with full power to issue regulations to govern the work of rebuilding. They were given complete authority to remodel the portion of the town which had been destroyed, reconstruct the streets, close old by-ways and establish new, and to grant compensation to any persons who might suffer loss as the result of these alterations. They were allowed to draw direct upon the Treasurer for all their expenses, up to a total of £6000. It being estimated that the work would occupy a considerable time, provision was made for the re-appointment of the commissioners from session to session, and for the filling up of any vacancies which might occur in their ranks; each House being empowered to fill the vacancies which might occur amongst its own representatives. The committee was still functioning, though only in an extremely dilatory manner as late as 1780.[33]

It is clear that the imperial authorities took no exception to the principles of joint committee administration.[34] Their complaisant attitude was dictated to no small extent by their ignorance of the real extent to which commissioners had gradually grown to assume a jurisdiction totally independent of the Governor. As early as the seventeenth century the precedents had been established upon which all later instances of joint commissioner control were subsequently

based. In early years both the commissioners and the Acts which appointed them paid a due respect to the vice-regal authority, and this fact, as I have already shown, secured their ready acceptance by the home authorities. With the advance of the succeeding century, however, the whole spirit underlying the situation gradually changed. Commissioners were no longer content with a subordinate jurisdiction. Many of the Acts by which they were appointed no longer scrupled to pay even a superficial deference to the Governor's authority, and those which still did so generally managed to render it nugatory by granting to the commissioners a financial independence so complete, that it carried with it an effective independence in every other particular. The Board of Trade, however, was singularly blind to the dangerous tendency of such legislation. Too frequently it was misled by the lip service which the Acts paid to the vice-regal authority, and deceived into mistaking the form for the reality.

Its ruling upon the *Redoubt Act* of 1779 is an excellent case in point. This law had yielded a seeming respect for the Governor's dignity by directing that he was to "give the necessary orders and directions" for building the redoubt, but had in the very next clause yielded to the commissioners an independent power to draw upon the Treasurer for all their expenses; which thus left them a loophole of escape from paying any heed to the Governor's wishes. Cunninghame complained loudly against the degree of independence which they enjoyed, and clearly perceived how their financial freedom left them free in every other particular also. The Board of Trade, however, paying too much attention to the mere form of the measure, pointed out that "the commissioners named therein [were] subordinate to him in every part of the duty to be by them performed", and that therefore it appeared to them "free from exception".[35] The Board was doubtless sincere in its belief that this was indeed the position. It may have appeared so in law, but it certainly was not so in fact. But even if the Board had awakened at this time to the true state of the position, it is very doubtful if it would have been able to effect a remedy: by the middle of the eighteenth century far too many precedents had already been permitted, and joint committee management of public undertakings had become far too solidly established to be easily overturned.

§ 6. Conclusion

Of the efficiency of this form of administration it is difficult to state a clear opinion. It seems probable that, judged according to

eighteenth century standards it was tolerably economical and efficient, though we know that towards the close of the century some dissatisfaction was growing up with respect to it. Even so great a demagogue as Henry Duke, speaking in 1780, could not repress his misgivings concerning the neglect into which many joint committee enterprises were falling. Although it was primarily against the Committee of Public Accounts that he aimed his chief objections, he did not exempt other departments of public administration from his criticism. "The Town Committee for several years had [had] only a single meeting or two . . . the Molehead Committee was open to the same censure."[36] Moreover we know from the remarks made by the same man when introducing an Excise Bill that year, that the Commissioners of Fortifications spent far more upon their works than the results seemed to justify:[37] consequently even they were beginning to excite doubts in many minds concerning their efficiency.

Despite this, however, we find no desire upon the part of the inhabitants to surrender this form of controlling their public works. Improvement within the scope and structure of the system they might and apparently did desire, but any serious departure from it was never for a moment contemplated.

Chapter VII

JAMAICAN FINANCIAL ADMINISTRATION

§ 1. Introduction

In contrast to Barbados and the Leeward Islands, colonisation in Jamaica was slow. The largeness of the island, its mountainous nature, the inaccessibility of much of its land, the lack of good roads and communications, its unhealthy climate, and the periodic dangers from Maroons and runaway slaves all combined to discourage white settlement. Accordingly the island during the seventeenth century only limped along,[1] and its administration, too, was slow in maturing. It is not that the settlers lacked spirit, but that the handicaps were tremendous. It took them the best part of twenty years to overcome the constitutional inferiority that attached to the island as a colony of conquest and to vindicate their right to the same relatively independent legislative powers that the older West Indian colonies possessed;[2] and even after they had succeeded in gaining these powers, their constitutional progress for a time was comparatively slow, though from the end of the seventeenth century they began to make up for lost time and by their efforts placed Jamaica at last in the very front rank of the West Indian colonies.

§ 2. Procedure in Tax Legislation

For six years after the conquest of Jamaica the island was kept under military government, but in 1661 civil government was begun with the setting up of a Council. No Assembly was summoned until the beginning of 1664 when the first House, with a membership of but twenty, held its brief sessions. Few traces now remain of its records, but under Samuel Long's leadership it proceeded to pass a number of radical tax measures by which the tax proceeds were entrusted to two treasurers of its own choosing, to be paid out only on the combined instructions of the Governor, Council and Assembly. These laws, though extremely significant, were only

short-lived, for the very next Assembly, under Governor Sir Thomas Modyford's influence, repealed them all and restored the treasury to the control of the Governor and Council.

For the next six years Modyford did without an Assembly, continuing the laws by royal proclamation whenever they expired and governing in a bluff but high-handed manner. With his removal in 1671, however, fairly regular Assembly sessions began again and within a few years parliamentary practice within the island had developed considerably, the Assembly striving in all things to model itself upon its great exemplar, the Commons of England. Public opinion held very firmly that supply was the gift of the people, and after 1679 the House repudiated the Council's right to originate tax bills,[3] though it occasionally allowed the Board an informal share in the drawing up of such measures,[4] but from the beginning of the eighteenth century it refused even this. Finally, after 1715 the Assembly denied the Council any further right even to amend money bills and although the latter protested vigorously and enlisted the support of the Board of Trade in its claims, it never again succeeded in amending one.[5] Thenceforth the sole right of raising and appropriating taxes lay in the Assembly, the Council retaining only the right of rejection if it considered a bill too objectionable to pass.

From the earliest years of Assemblies, there was never any systematic budgeting. The properly constituted Executive, the Governor and Council, at no time made it a practice to lay before the Assembly regular and detailed statements of the revenue together with estimates of projected expenditure; although they were quick to draw the House's attention to the state of the treasury whenever funds were low. The representatives always had a right to be informed of the treasury accounts[6] and, after 1680, definitely to inspect them.[7] Therefore, even when the Governor did send them down a statement of the public accounts, they generally (after 1680) preferred to examine the Receiver General's books for themselves. The most convenient way to do this was to appoint a committee to inspect the public accounts, which, after examining them, reported back to the House which could then consider ways and means of supply.

This independent method of forming an estimate of the revenue position sometimes resulted in curious situations, as when in 1708 the Assembly, after listening to a report of a Committee of Public Accounts, decided that the treasury was in quite good shape, being "now in cash and good debts in credit upwards of £6000", and that therefore new taxation was unnecessary. On hearing of this decision, Governor Handasyd expressed his amazement, stigmatising the

Committee's report as false, and declaring that he would send down figures to prove "that the treasury was charged with £5000 for which there were orders out, and not a groat to pay it with!" The Governor was able to prove his statement and the Assembly thereupon consented to raise supply;[8] but the situation is of interest as showing the embarrassments that could arise from such two-fold accounting. The absence of any regular estimates of conjectured expenditure for the forthcoming year, to be laid before the House during times of supply, persisted right down to 1768 when, for the first time in Jamaican history, the regular practice was begun of submitting proper estimates to the Assembly prior to the raising of new taxation. But even then it was not the Governor or Council that submitted them, but the Assembly's own Committee to inspect the Public Accounts, which had by then become a firmly established and vitally important *de facto* branch of the financial administration.[9]

The tax bills were usually drawn up by a sub-committee of the House and, after being introduced, were passed three times before being sent up to Council[10] for similar three-fold passing, after which they were submitted to the Governor for his assent. Being the sole managers of supply the representatives had full power (after 1715) to devote money to any purpose they saw fit and to provide for its payment by the insertion of a suitable appropriation in a money bill. The Governor and Council were practically powerless to prevent such appropriations since they retained no power over a bill save that of complete rejection which would bring its good as well as its bad features to naught and gravely embarrass them for lack of funds. Circumstances occasionally compelled them to adopt this course, but not often. To acquiesce in appropriations that they actively disagreed with was very galling but could not be avoided. As the Jamaican Council declared in 1746, they had "already this session passed the Rum bill in which there was a clause for rewarding a militia officer with the sum of £750 who, as his Excellency informed the Board, behaved very ill, broke his orders and deserved rather to be punished than rewarded; and must of necessity continue to pass every money-bill, however unreasonable some of the appropriations be, without amendment to avoid confusion and the ill consequences that might otherwise ensue".[11]

In Jamaica the oldest and most important form of tax was the *Impost Act* laying duties on strong liquors brought into the island, the first instance of which was the *Impost Ordinance* issued by Governor Doyley and his Council in 1661 and in later years enacted by the whole legislature. Another source of revenue was the licence

fee required of all the retailers of strong liquors—a tax that was first laid by Act of the original legislature early in 1664, but in later years became incorporated in the Imposts Acts, which from 1672 onwards were likewise widened by the inclusion of duties on imported sugar, tobacco, indigo, ginger and cocoa. Further regular, though minor, sources of revenue were the quitrents from crown grants of land and the proceeds from fines and escheats, all of which payments early in Jamaican history (1680) were by royal consent appropriated to local uses. In 1683 the *Impost Act* was passed for a period of 21 years, and in 1704 it was renewed for a similar period. Finally in 1728, with rates slightly increased, it was erected along with the quitrents, etc., into a permanent revenue calculated to yield £8000 or more per annum to meet the expenses of the regular civil or military establishment, chief among which were £1250 for maintenance of the fortifications, £2500 for the Governor's salary, nearly £1000 for wages of officers and gunners at the forts, and the rest for salaries and fees of other public officials and the maintenance of government buildings.

This permanent revenue proving quite inadequate to meet all charges of government, recourse had to be made to other taxes, a common one being a poll tax on slaves and estate animals. In the eighteenth century when government expenditure continued to mount steadily year after year, additional revenue was obtained from an annual *Additional Duty Act* (first levied about 1705) laying additional duties on slaves and goods imported into the island, from an annual tax on all strong liquors retailed in Jamaica (commonly known as the *Rum Act* and first imposed in 1735),[12] and from the annual *Deficiency Act* (levied regularly from about 1716)[13] laying a tax on all estate owners who failed to maintain a sufficient proportion of white servants to negroes, as required by law.

§ 3. Appropriation and Issue

After the representatives late in 1664 receded from their earlier attempt to keep the treasury completely under their own control, they sought, as an alternative way of safeguarding their grants, to appropriate the tax proceeds only to such clearly specified uses that the Governor and Council's freedom of action in spending the money would be reduced to an absolute minimum. Out of an Impost calculated to yield about £2000 per annum, they appropriated £1000 to the Governor's salary, £400 to the Lieutenant Governor, £200 to the Major General, £80 to the Chief Justice, £20 to each of the

Assistant Judges, £20 to the Clerk of the Assembly, £10 to the Assembly's Marshal, and the balance to any purpose that might prove necessary.[14] Although the right of the Governor and Council to issue these sums was not invaded, their power to misapply them was effectively prevented. This kind of detailed appropriation continued to be used until 1677 when the House, resentful of the Receiver General's office having been filled by letters patent,[15] tried, though in vain, to return to the February 1664 system of appointing a Collector and a Treasurer of its own,[16] and refused supplies rather than forego its right to do so.

During the short but stormy administration of Lord Carlisle (1678-80) in which he antagonised the Assembly by seeking, though in vain, to persuade it into accepting for Jamaica the Poynings' system of control hitherto associated only with Ireland, relations deteriorated so rapidly that supply came completely to a standstill. When finally in 1679 an empty treasury compelled Carlisle to seek further aid, the representatives in granting it refused to entrust the money to the Crown's Receiver General and insisted on choosing a Collector of their own, Richard Wilson, whom they empowered in the Act itself to receive and disburse the tax proceeds.[17] Absolutely desperate for revenue, Carlisle had no option but to assent.

Nevertheless the fears and apprehensions which the Poynings' conflict engendered, coupled with the Assembly's relief at gaining the victory, *did* make the House more wary for the future of stirring up needless opposition in England, and we find that the tax laws of the succeeding decade not only avoid attempting to by-pass the Receiver General but even desist from the closely detailed appropriations that had hitherto prevailed, the *Impost Act* of 1681 merely appropriating the regular revenue (i.e. from impost duties, quitrents, fines, and escheats), £1250 to the use of fortifications and the balance "to the support of the government of this his Majesty's island and the contingent charges thereof and to no other use, intent or purpose whatsoever",[18] a clause that was in essence repeated in the 21 years' Act of 1683, the continuing Act of 1703, and finally in the perpetual *Revenue Act* of 1728.

Thus the freedom of action of the Governor and Council may seem at first glance to have been well protected, until we remember that the impost—the only "permanent" and certain revenue—for the forty years 1680 to 1720 did not average more than £4000 a year, out of which £1250 was reserved for fortifications and a further £2000 or so for the Governor's salary, leaving little enough for the many other salary charges, let alone anything else.[19] Clearly, therefore,

this revenue was not sufficient to cover even the essential costs of the regular establishment, let alone produce a surplus for the Governor and Council to play with. Moreover, seeing that all warrants for payment out of it required the Governor's signature and could be issued only with the Council's consent,[20] serious misapplication was practically impossible. But if the Impost sufficed to meet no more than salaries and a few other charges of the regular establishment, what of the many other works and services that had to be performed at the public expense? What of the employment of sloops to watch over the coasts in time of war, the subsisting of the regular troops sent to the island, and the measures that had to be taken against the Maroons and runaway slaves from time to time? What of the scores of claims for damages, repairs, odd salaries and supplies, and the dozen-and-one other services that an island twice the size of Lancashire was bound to require? If the "permanent" revenue sufficed for none of these, how were they provided and paid for?

The answer is that they had first to be approved by the Assembly and then defrayed out of additional revenue raised by tax Acts passed specially for the purpose. As the island progressed these extra taxes became a yearly necessity, the Acts raising them being commonly called "annual" tax Acts. These customarily appropriated their proceeds to the work or service in hand, and then entrusted them to special commissioners—frequently Assemblymen, and invariably named in the Acts—who were made responsible for all receipts and expenditure and from time to time accounted for the moneys direct to the Assembly or a sub-committee of it.[21] Indeed, so completely did the House by such commissioner action remove from the Governor and Council the control of practically all funds except the "permanent" revenue raised by the Liquor Impost, fines and quitrents, that Lord Archibald Hamilton (Governor, 1711-1716) complained of it to the Board of Trade, which reproved the House and instructed his successor, Sir Nicholas Lawes, to refrain from assenting to any more commissioner bills—an instruction which was mechanically repeated to every succeeding governor down to the end of our period.[22]

But despite this Instruction, the Assembly had no intention of giving up its direct control of the "annual" funds (as all funds *not* raised by the Liquor Impost were called) if it could possibly help it, and with that genius for yielding the shadow but withholding the substance so characteristic of West Indian politicians it immediately hit upon another device for attaining the same end. In the "annual"

tax Acts of the years that followed, instead of making the proceeds payable to commissioners, the Assembly contrived that they be paid into the hands of the Receiver General not in his official capacity, but as its Commissioner,[23] appropriating them most carefully to their intended uses, and obliging him to account for them to itself alone.[24] It dare not blazon this condition abroad too publicly, however, for fear of attracting the Board of Trade's notice, so for many years, to keep its pretensions legally alive, it was content to style the Receiver General by the name of "Commissioner" in *one* measure only—the annual *Deficiency Act*. When this had gone on for several years without challenge,[25] the House threw off all pretence and after 1733 in *all* the annual tax Acts openly designated the Receiver General "Commissioner" to receive and pay out the moneys raised. This practice went on right down to 1753, the passage of the perpetual *Revenue Act* of 1728 making no difference in any respect except that it increased to a certain £8000 per annum[26] the permanent revenue which alone the Governor and Council had unrestricted power to issue out for the purposes of the regular civil and military establishment. All the revenue raised from year to year by additional taxation—and it was increasing steadily every year owing to the rapid development of the island—remained completely in the Assembly's control to appropriate and to issue.

But pride comes before a fall! In the late 'forties of the eighteenth century the Receiver General, Robert Graham—a new holder of the post—was an absentee represented in Jamaica by his deputy, Benjamin Hume. The Assembly, having confidence in Hume from past dealings, in the 1749 *Deficiency Act* presumed to vest the tax proceeds in him not only in his private capacity but in such a way as to continue him as Commissioner even if he were to lose his deputation from Graham. Governor Trelawny and Council both protested, but in vain, lack of funds compelling them to pass the measure. The same thing occurred for the next three years running. In England, however, Graham's vigorous protests at length induced the Board of Trade in 1753 to look into the matter, and it would have had the objectionable Acts annulled if they had not already expired.[27] However it reported against them to the Privy Council which instructed Trelawny's successor, Governor Knowles (1752-56) to refrain from passing any more such bills.[28]

When, therefore, the next Additional Duty Bill was sent up by the Assembly to Council in October, 1753, the latter, acting on the recent instruction, rejected it. The House was thrown into such a ferment that Knowles prorogued it awhile, but on re-assembling it

showed no abatement of passion and proceeded to draw up and pass a series of seven bold resolutions for which it is justly celebrated.[29] In one of these it asserted "the inherent and undoubted right of the representatives of the people to raise and apply moneys for the services and exigencies of government, and to appoint such person or persons for the receiving and issuing thereof as they shall think proper; which right this House hath exerted and will always exert, in such manner as they [*sic*] shall judge most conducive to the service of His Majesty and the interest of the people". The Assembly proving adamant over the commissioner clause of the bill, the Council and Governor, rather than lose supplies passed it. But Knowles was a notoriously stubborn adversary as well as a born intriguer, and throughout the first half of 1754 he set himself to build up a party in Jamaica favourable to himself, for this purpose giving his aid to the powerful merchant faction who desired to move the island capital from Spanish Town to Kingston, and gaining in return their support for his own designs. When in the general election later that year the Kingston party gained a small majority of seats in the House, one of the fruits of victory was that Knowles secured an *Additional Duty Act* and a *Rum Act*[30] free of objectionable features, the proceeds being vested correctly in the Receiver General in his official capacity, even though the Acts still obliged him to account direct to the House for his receipts and payments.

In the heat of the Kingston and Spanish Town conflict nothing immediate was done to redress the commissioner situation. Then popular elation at the success of the Spanish Town interest was somewhat clouded by the news of the Commons' complete rejection of the resolutions of 1753. With a soberness which reminds us of the wariness they showed seventy years before at the close of the great constitutional contest of 1677-80, they resolved to soft-pedal awhile. The loss of the commissioner clause was not as serious as might at first be thought. If it had been, the representatives would have moved heaven and earth to reverse it. But of what real account was the *holder* of the funds so long as the Assembly could rigidly control him? Surely the representatives' power to control the "annual" funds by appropriating them only to clearly specified objects, by authorising their issue only in accordance with the most strict and detailed terms of the tax Acts themselves, and by obliging the Receiver General to account direct to them as often as they demanded, gave them as much power over the Receiver General as was conceivably necessary. For thirty years they had been in the habit of vesting their funds in him in his *private* capacity: now they had been manoeuvred

into vesting them in him in his *official* capacity. Was the difference so vital after all? Was it worth a further upheaval of the first magnitude to accomplish so little, yet risk losing so much? Apparently they thought not,[31] for they were content for the remainder of our period to entrust the "annual" funds to the Receiver General in his official capacity.

The tax proceeds were, however, invariably appropriated with the utmost care and detail to the various uses for which they were intended,[32] for these appropriation clauses were the Receiver General's authority for making his disbursements. So far as these "annual" funds were concerned, there was never any question of the Governor and Council having any part whatever in their payment. They were normally issued by the Receiver General only on the direct authority of the House expressed by way of closely detailed appropriation clauses in the Acts. The public accounts relating to both the permanent revenue and the annual funds were closely scrutinised by sub-committees of the Assembly regularly appointed for that purpose [See section on CONTROL OF THE PUBLIC ACCOUNTS], and it was almost as much as the Receiver General's place was worth for him to disobey the House. The fact that the annual funds were not issued by warrants from the Governor, as they ought to have been, was perfectly well known to the English authorities who had periodical qualms about the practice but nevertheless allowed it to continue. Finally, Archibald Campbell, appointed Governor in 1781 towards the close of the American War of Independence, carried with him an Instruction authorising him to acquiesce in it.[33]

To recapitulate, the procedure adopted to meet claims on the Treasury after the passage of the perpetual *Revenue Act* of 1728 was briefly this. So far as the permanent revenue was concerned, moneys were paid out to the uses named in the Act by warrants from the Governor issued with the Council's consent up to a total of £8000 a year.[34] If they ever did abuse their trust and issued moneys in excess of their legal right, they invariably met with opposition from the House as soon as the fact became known. The House could, if it thought fit, refuse to "allow" the Receiver General for the payments thus made; witness the following resolution of the Assembly of 9th November, 1758, wherein the representatives declared "that if the Receiver General shall pay any moneys by Order in Council out of the revenue more than what the . . . Commander-in-Chief in Council hath a right to do by the Revenue Law [of 1728], that he shall be accountable for his neglect of duty to this House, and shall pay the several sums he shall advance contrary to the said law out of his

private fortune".[35] The balance of the revenue, arising as it did from *annual* taxation, was in the complete control of the Assembly and issued only on its authority. These annual funds increased so rapidly as Jamaica developed in the eighteenth century that shortly after 1750 they amounted to about £50,000 and in the troublous war years of the early 'eighties amounted to well over £200,000.[36] These large sums were disbursed each year by the Assembly alone. Where claims were for salaries, contracts and other clearly ascertainable charges the House more or less automatically sanctioned the inclusion of "uses" in the annual tax Acts to pay for them. Where, on the other hand, the claims were for miscellaneous and previously unascertainable amounts, the accounts relating to them had first to pass the scrutiny of the Assembly's Committee to settle the Public Accounts, be recommended by it for settlement, and finally sanctioned by the House for payment by means of the inclusion of appropriate "uses" in one or other of the next tax laws.[37]

§ 4. The Control of the Public Accounts

From its earliest years the Assembly had possessed the right to inspect the public accounts, though it would appear that in the 1670s this right amounted to little more than permission to scrutinise the returns which the Treasurer or Receiver General was obliged periodically to render the Governor and Council, and which were always available in the Council Office.[38] In Carlisle's time, however, the House insisted on an unrestricted examination of the Receiver General's books (1679) and refused supply until the Governor gave in.[39] After that the House was never again hindered in its periodical desire to examine the public accounts, though whether it first had to apply for the Governor's leave to view them, depended on what a stickler for form or otherwise the Governor was. It became customary from quite early times to appoint a sub-committee to do the actual inspecting; this committee then reported its findings to the House before ways and means were ever considered.[40] On rare occasions even a combined committee of the Assembly and the Council performed this task, but this was distinctly exceptional, the committee of the House normally acting by itself.

When after about 1692 the Assembly, to meet the extra costs imposed by the war, began raising considerable sums by annual taxation and vesting these in commissioners of its own choosing, the periodic committees set up to inspect the public accounts naturally

examined the expenditure of these also,[41] and after the first few years *this inspection was the only audit that these annual funds ever received.*[42] From the beginning of Sir Nicholas Lawes' administration (1718) it became the constant practice to set up the "Committee to *inspect* the Public Accounts" at the beginning of each session;[43] this Committee's chief task was to examine and report to the House the state of the finances and make recommendations to it on revenue matters.

But a second regular committee of even greater importance sprang up in the course of the eighteenth century. This was the body officially known as the "Commissioners for *settling* the Public Accounts", which had its origin in steps taken by the House early in that century to get in arrears of taxation. Jamaica was notorious for the laxity of its churchwardens and vestrymen and the artfulness of its tax evaders! Certainly no other West Indian colony had so bad a reputation for the mountain of arrears that always seemed to dog its treasury. From time to time, therefore, the Assembly was driven to try to collect these arrears, and the usual expedient was to set up a temporary body of Assemblymen and others as commissioners with power to compel payment.[44] In 1732, however, a much better device was hit on—none other than the setting up of a standing commission of Assemblymen not only to collect arrears, but also to exercise a general oversight of the public accounts.

The Act constituted seven named Assemblymen "or any three of them . . . a committee during the interval of the sitting of the Assembly, so long as this Act shall be in force, to settle, adjust and prepare a state of the public accounts of the Receiver General, and they shall be empowered to settle and adjust the Additional Duty, Deficiency, and Poll Taxes once every three months and those of the [Permanent] Revenue once every six months and report the same to the next session of the Assembly".[45] This committee proved so satisfactory that it remained a continuous part of the financial machinery of the island. The members were invariably Assemblymen and were soon invested with wider and more effective powers not only to get in arrears but also to settle and adjust claims on the annual funds in advance of the Assembly's sanctioning their payment. Finally, in 1774 a permanent Act was passed by which *the entire Assembly* were "appointed commissioners; and they or any three of them during the intervals of the sittings of the Assembly" were empowered "to settle and adjust the several accounts of the old and new revenue, additional duty, deficiencies, poll taxes, and all other funds and taxes whatsoever . . . and also, from time to time, as

often as they shall think proper, to look into and count over the cash which shall be in the Receiver General's hands".[46]

Between them, therefore, the sessional Committee to *inspect* the Public Accounts and the standing Committee to *settle* the Public Accounts exercised a constant supervision of the Receiver General and his assistants. Indeed the Assembly by 1750 had become, through these committees, virtually an administrative organ: in all essence it was the Treasury Board of the island, and no estimate of the Jamaican constitution in 1783 is sound that fails to recognise this fact.

§ 5. The Receiver General

The earliest Treasurer whose name still survives among the records of Jamaica was a Mr Jordan who is ordered in the Council records of 8th November, 1662, to bring in his accounts for audit by a small sub-committee of the Board.[47] He was presumably appointed by the Governor in 1661. With the meeting of the first Assembly in January, 1664, the representatives determined on a drastic alteration and insisted on nominating the Treasurers (two of them) themselves. The second Assembly, however, revoked this step and restored to the Governor and Council their right to appoint the tax officials, a practice that continued for the next thirteen years, even surviving for a year or two the Crown appointment of the Receiver General by letters patent in 1674.[48] Of the joint patentees, Thomas Martin and Leonard Compeare, Martin alone travelled to Jamaica where he landed in February, 1676. The local inhabitants, including the Governor and Council, not unnaturally resentful of this invasion of local rights, did all they could to obstruct him in the performance of his duties, contending that he had a right to collect no more than what was locally regarded as the "King's" revenue—the quitrents, fines and escheats—and continuing the treasurer and the liquor impost collectors in their posts. Indeed the representatives were so perturbed over the new appointment that they determined to safeguard the regular revenues from royal interference by striving in 1675 to revive the early 1664 mode of themselves appointing the treasurer and impost collector. For a time Lord Vaughan managed to persuade them out of this course, but they returned to it more strongly than ever in 1677 and let the tax bill fall rather than forego their demands.[49] But all efforts to block Martin were in vain, for the Lords of Trade insisted on his admission to the full duties of his office, and the House, after one last burst of resistance in 1679, acquiesced.

After that the Receiver General was the only person constitutionally entitled to collect the island revenues. But the representatives were not to be wholly thwarted. While not denying the Receiver General's sole right to handle the *regular* revenue (i.e. the proceeds of the 'permanent' liquor impost) they refused to entrust to him the additional funds that had from time to time to be raised for special taxation for extra works and services. These they insisted on retaining within the hands of commissioners appointed by themselves. At first this did not appear to be of much consequence for these occasions for special tax raising were uncommon. Accordingly the Receiver General does not appear to have objected. But how different things became when the great wars of the late seventeenth and early eighteenth centuries broke out! Within a year or two special taxation became an annual necessity and an increasing share of the island revenues began to be handled by commissioners—generally Assemblymen—and this went on unabated for a further twenty years. Finally in Lord Archibald Hamilton's time (1711-16) the mounting tension between Assembly and Executive over tax amendment, right of adjournment, the Agent and other things, brought this matter to a head also, and the Board of Trade instructed Hamilton's successor, Sir Nicholas Lawes, to insist on *all* revenues being entrusted to the Receiver General. The story of the Assembly's further strivings has already been told [See section on APPROPRIATION AND ISSUE] and shows that while it failed to prevent the "annual" revenues from falling into the Receiver's hands it yet managed to control their issue in ways very satisfactory to itself.

The question of the Receiver General's relation to the House is worth a moment or two's notice. Until about 1675 it does not appear that the Assembly had any right to do more than view the Receiver General's accounts as they lay, audited by Council and recorded in the Council Office. But in 1679 the representatives presumed by warrant from the Speaker[50] to summon the Receiver General himself before them with his books. The Receiver protested to the Governor (Lord Carlisle) who not only told him to ignore the warrant but bade him reply "both from the King and from my Lord, he was not obliged to show his accounts to the Assembly".[51] Upon the representatives refusing to proceed any further with supply until their desire had been granted, Carlisle somewhat grudgingly *instructed* the Receiver General to lay his accounts before them. Though the House thus won a considerable victory, it had yet been repulsed in the matter of procedure, and not for another twenty years did it again presume to summon the Receiver direct before

itself. In 1701, however, by Speaker's warrant it ordered him to appear. He sent back an answer that he would attend, but at the same time complained to Governor Beeston and Council, both of whom expressed their resentment, the Governor declaring it a thing "never heard of" before.[52] Nevertheless, unlike Carlisle, he did not go to the length of forbidding the Receiver to attend, so the latter in due course did so and had his books examined.

Beeston was shortly afterwards superseded by William Selwyn who proved quite a complaisant Governor, for when the House in the following year again ordered the Receiver to attend with his accounts, there is no record of Selwyn's objecting. He died within a few months and was succeeded by Governor Handasyd who permitted the House the same direct approach to the Receiver, assuring it on one occasion that "the accounts of all public moneys shall be always ready to be laid before you". The Assembly certainly took him at his word, even authorising the chairman of the committee set up to inspect the Receiver's accounts to command his attendance,[53] though more usually the House itself issued the order through its Speaker or its Clerk. Strangely enough, Lord Archibald Hamilton let the practice go on unchecked—perhaps he felt that he already had enough on his mind contesting the claims of the House in more serious directions! But his successor, Sir Nicholas Lawes, took up the same stand as Carlisle had done, forbidding the Receiver to attend until the House had first addressed the Governor to give the necessary direction.[54] The two following governors, the Duke of Portland (1721-6) and Robert Hunter (1727-34) seem to have let the matter slide, the Assembly reverting to direct ordering.[55] From the time of Acting-Governor John Gregory (1735-8) however, the Assembly returned to a more courteous procedure; whenever the time came round for a Committee to be set up to inspect the public accounts, the House customarily made formal application to the Governor to direct the Receiver General to lay his books before it. Though this seems to have been a matter more of courtesy than necessity, it persisted right down to the end of our period. It is clear, however, that the Receiver on less formal occasions frequently attended the House and its committees without any such preliminaries, which indeed is only to be expected when we remember what a burden of responsibility he had for the receipt and payment of the annual funds, the administering of which was virtually in the control of the House.[56]

§ 6. The Surplusage Question

The only remaining feature of interest is the question of the disposal of the surplus arising from the perpetual *Revenue Act* of 1728—a bone of contention that cropped up from time to time between Council and Assembly. After appropriating the sum of £8000 to the support of the regular civil and military establishment, the Act went on to declare that the surplus should "be applied to the use of parties to be raised for the reduction of rebellious negroes or to such uses as the Governor, Council and Assembly . . . by any law . . . shall think proper". Before many years were out great conflict of opinion arose as to the interpretation of this clause, the Council claiming that it guaranteed to the Governor and itself an equal voice in the disposal of the surplus; the representatives, on the other hand, contending that any bill for appropriating the surplusage, being a money bill, gave the Governor and Council no more power than they had over any other money bill, viz. that merely to pass completely or reject completely. They denied the Council any right to amend such a measure and often presumed to dispose of the "surplusage", as they called it, by means of a "tack" in one or other of the annual tax bills, a course that was prejudicial to the Board's rights.

The matter came to a head in the session of 1769-70 when the Assembly presumed once again to appropriate parts of the surplusage by means of "tacks" in the Poll Tax and Rum Bills. The Council rejected both and argument grew loud and tempers frayed. The Council conceded that in the past it had sometimes allowed such "tacks" but claimed that such occasions had been merely for the sake of convenience and could not be "considered as vesting in the House an authority which the law hath not given them". The House in reply resolved that it was "the sole and inherent right of the people to raise, give, grant and appropriate all moneys and surplusage of money that . . . may arise by any bill . . . in this House".[57] The Assembly proving intractable the Governor, Sir William Trelawny, first prorogued and then dissolved it without having succeeded in getting supplies. A new Assembly proved more amenable and a compromise was adopted—that of appropriating the surplusage by means of a special Act passed solely for the purpose. The lion's share of influence thus remained in the House, for Council could not amend such a bill; but at least it could reject it without causing a collapse of the ordinary finances. This method of appropriating the surplusage by special Act was employed again and again and gave

fairly general satisfaction, though from time to time minor differences still arose. A permanent settlement of the problem was not achieved until 1809 when a final compromise was at length arrived at, the Assembly agreeing to increase to £10,000 per annum that part of the permanent revenue appropriable to the maintenance of the regular establishment (and therefore disposable by Council), on condition that the Board agreed that all in excess of this figure might be regularly used to supplement the annual funds and be freely appropriated by the House in the Acts that raised them.[58]

Chapter VIII

PUBLIC WORKS AND KINDRED SERVICES IN JAMAICA

§ 1. Introduction

In Jamaica, as in Barbados, the Governor and Council were in theory the correct Executive to whom all matters of administration should have been entrusted. Constitutionally the Assembly was merely a law-making body whose only administrative concern should have been the planning of services and the provision of finance. Nevertheless, in the years under review the House came to usurp the lion's share in the conduct of most works and services. How did this come about? Was the process slow or rapid, and by what steps was it achieved? The following pages will help to provide the answer.

As one would expect from an island the size of Jamaica, the problems of administration were considerably more varied than those of the smaller colonies. Frequent periods of war called for constant attention to the fortifications and the taking of other steps to safeguard the island, and even when Britain was at peace the long years of danger from the Maroons and runaway slaves required the frequent despatch of armed parties to suppress them, and the building of barracks or stockades at various points as bases from which these parties might operate. Then there was the need of more roads and bridges, the erection and repair of public buildings, the encouragement of immigration and the maintenance and improvement of Kingston Harbour. Such things were properly the business of the Governor and Council and for the first thirty years the people were content to let them remain so: not until the early 1690s do we find the Assembly beginning to display a parallel concern and to assume to itself a right to share in the actual tasks of administration.

§ 2. Sloops to Guard the Coasts

An early sign of this disposition on the part of the representatives appeared in 1693 when, during an invasion scare, Lieutenant

Governor Beeston sought the assistance of the House in the despatch of several sloops to cruise about the coasts and bring warning of any approach by the French, a service far beyond the means of the ordinary revenue to supply. By way of aid the representatives raised over £13,000 by a poll tax and other means but, following Barbadian precedents, refused to entrust the money to the Lieutenant Governor and Council, preferring rather to vest it in commissioners of their own choosing—consisting of four Assemblymen and two private citizens—whom they authorised, "by the advice and consent" of the Lieutenant Governor, to buy or hire four sloops, fit out and victual them, and so prepare the way for Beeston to appoint officers and commanders, give them their cruising directions and send them out. The making of all contracts and payments, including those for salaries and wages, was left to the commissioners or to two of them specially named as treasurers. Beeston was justly indignant at the Assembly's presumption, to which he yielded he said "more for the safety of the island than your right". It is clear the commissioners, despite the clause about the Lieutenant Governor's "advice and consent" did not pay much attention to his authority and behaved very much as they pleased; so much so, that when things did not pan out well for the enterprise, Beeston was able to adopt an "I told you so!" attitude and point a finger of scorn at the commissioners for what he held to be defects in the arrangements they had made.[1]

The fitting out of guard sloops was so expensive a service that it was undertaken only in times of special urgency. Such an occasion again arose in 1710 when Governor Handasyd recommended the fitting out of two sloops. Again the Assembly acquiesced in the task, appropriating £5,000 for the purpose and vesting it in three Assemblymen to fit the vessels out. Disputes between these three unfortunately held the work up so much, that in 1711 the indignant House appointed two fresh commissioners (both Assemblymen) to push ahead with it. Since no copy of the authorising Act is now discoverable it is uncertain how far the powers of the commissioners extended, but it is clear from the Assembly records that they possessed virtual independence so far as the hiring, fitting out, and payment of wages and bills were concerned; though there is no suggestion that they had any share in the appointment of commanders or in giving cruising directions.[2]

As has been told in the previous chapter, the Board of Trade in 1718 reprimanded the Assembly for these and other commissioner practices, and the House for a time desisted from them. Accordingly, when in 1720 Governor Lawes asked help in sending out a pair of

sloops to protect the coasts from pirates and Spanish privateers, the representatives adopted the obviously correct procedure of appropriating a fund to the purpose and leaving the Governor, with the aid of the Receiver General, to order both their fitting out and their despatch.[3] For the next two or three years they consented to the hire of only one sloop but again left the control to the Governor.[4] But with the passage of time they reverted to their earlier practice of appointing commissioners of their own to hire and fit out the vessel, hire the crew, and pay all charges; but leaving the appointment of officers and commanders and the actual direction of the enterprise to the Governor.[5]

§ 3. The Inspection and Management of Fortifications

In times so filled with war's alarms as the late seventeenth and eighteenth centuries, the maintenance of island fortifications was naturally a matter of the first importance. At first the only forts of consequence were the great ones at Port Royal, but as time went by smaller ones were erected at places as widely scattered as Port Morant, Kingston, Old Harbour, Carlisle Bay, Mosquito Point and Port Antonio. The "permanent" Revenue Acts appropriated the sum of £1250 to fortifications but beyond the earliest years this was quite insufficient and by the late seventeenth century considerable sums from the "annual" funds had periodically to be applied to this purpose.

Because the money for fortifications was wholly from island sources the Assembly from very early years seems to have possessed the right periodically[6] to inspect the works that were maintained out of it. On such occasions it appointed a committee of its own to join with a committee of the Council not only to view the works but, also if need be, to discuss and resolve upon the steps necessary for their improvement. The combined committee then reported its findings to the parent bodies which, having debated them, brought them to the notice of the Governor for action. It appears that either House might take the initiative in moving the appointment of such a committee,[7] the proportion of Assemblymen to Councillors on it varying, but generally being more than two to one. But there is no evidence in the seventeenth century to suggest a desire on the part of the House to encroach on the actual management of the fortifications; its only concern was for inspection to see that the forts were being kept in good order and that the Governor and Council were not misspending the public money.

Over this inspection, however, the House soon came to adopt a very free and independent attitude, and to regard the setting up of the combined committee as a sort of automatic right in connection with which the Governor bore little part save acquiescence.[8] This was doubtless because most of the early governors gave the combined committees free rein to look over the forts as they pleased, inspect the guards, and check over the powder and stores. It is not surprising, therefore, that a governor like Lord Archibald Hamilton—stickler for form that he was—expressed strong objection, for he saw that the combined committee as it usually behaved was an encroachment on the Executive. Accordingly, when in 1713 the Assembly, adopting the usual procedure, set up a committee of thirteen to view the fortifications and asked Council to appoint a committee to join with it, the Council replied "that his Excellency having been pleased to lay before the Board the state of the fortifications at Port Royal which he had required from the proper officer; and . . . [as] his Excellency conceives it in all respects fully answers your intentions in your message on Friday last, we have therefore sent you down the said state for your inspection".[9] The representatives indignantly replied that "our House do not concur the said message to be satisfactory; and that, as they always, since the first sitting of Assemblies in this island, have been admitted to view the fortifications, and as they with great reason conceive it to be their right, *they insist upon the same*; and do again desire that your honours will be pleased to appoint a committee of your Board to join with a committee of this House to view the forts and fortifications".[10]

Governor and Council thereupon relented and consented to the combined committee, five Councillors being chosen to represent them upon it. A noticeable feature of their inspection, however, was that Hamilton refused them access to the powder and stores or permission to muster the guards. Since the representatives desired a statement of the powder and stores they were obliged to ask the Governor to instruct the captain of the forts at Port Royal to lay one before them.[11] The Assembly greatly resented Hamilton's attitude and seem to have decided to let the fortifications slide rather than allow their *right* of inspection to be reduced to a mere vice-regal concession, for when in 1715 it proposed that a combined committee be set up to view the fortifications and the Council pointed out that it would only be "decent first to apply to his Excellency for his leave and directions", the House strenuously objected and let the proposal fall rather than concur in such an application.[12] As soon as Hamilton had left the island in 1716, however, the Assembly and Council under

President Heywood (Governor pro tem.) returned to the free and unrestricted committee of former years.

But the next governor, Sir Nicholas Lawes (1717-22), while not adopting so strict an attitude as Hamilton had done, yet considered that, even as a matter of courtesy, his leave should be asked before a combined committee should set foot inside the fortifications. When in 1721 the House and Council set up a combined committee to view the defences at Port Royal, the Governor quietly asked "how they would get into the fort?" The representatives at once fell into debate "whether in regard the stores of powder being paid into the fort as part of the revenue, and the Assembly being empowered by the *Revenue Act* to inquire into the several branches thereof", the House was not "*entitled* to enquire into and view the same", and resolved that it was. A further queston being proposed, whether a message should be sent to desire leave of his Excellency to view the same, "carried in the negative". Nevertheless, a day or two afterwards they receded from this decision and consented "for the sake of that good correspondence which was necessary to be preserved between them" to ask the Governor "that he would be pleased to give his direction to the commanding officer of the said fortifications to attend both committees".[13] The courtesies thus established—although perhaps of small importance—were adhered to right down to the end of our period, during the whole of which time combined Committees of inspection continued to be the customary way by which the Houses at regular intervals formally informed themselves of the state of the fortifications.[14]

But the time was steadily approaching that was to see a radical change in the method of actually *ordering and conducting* the work of the fortifications. The Governor and the Council, busy with their private affairs and their ordinary public duties, were far from being the most suitable persons to manage this work. Although they employed a trained engineer to supervise the day-to-day construction and maintenance, things often went wrong, contractors skimped their work, defects went unremedied, and for want of good management value was seldom received for money expended. The Council and Assembly in 1742 pointed out to Governor Edward Trelawny that "the forts and fortifications . . . appear much out of repair and in a defenceless condition, notwithstanding great sums of money have been . . . expended upon them, which we apprehend is chiefly owing to the want of proper persons to inspect and direct the carrying on of the necessary works". Accordingly they suggested that the Governor appoint a standing Board of Commissioners to consist of

four Councillors and seven Assemblymen (but not including the Governor) "to inspect the works in and about the fortifications", with power "to agree with workmen and labourers, and for materials necessary for the said service". They further asked the Governor to "give orders to the Commanders of the said fortifications to admit at all times the said commissioners . . . to enter into, inspect and give directions for the carrying on of such works . . . as shall be judged necessary".[15] The two Houses, though asking Trelawny to do the appointing of the Commissioners, were yet careful to specify by name just what Assemblymen and Councillors they recommended, and in reply the Governor consented to do as they desired, agreeing that "by this method we shall not only be assured that the works will be performed according to contract, but that the prices will be reasonable. I am liable in my station", he continued, "to be imposed on in both." It is equally clear that he trusted, with some justification, that if the representatives had the lion's share in the management of the works they would much more cheerfully raise money for their upkeep. In order that the Commissioners should be able to do their work freely and without restriction the Governor and Council empowered them to draw direct on the Receiver General for whatever moneys they required.[16]

So satisfied were all concerned with the new practice that Trelawny next year agreed to the Commissioners being appointed by an Act passed specially for the purpose. Once again the Governor was omitted from the Board, which was made up of four Councillors and thirteen Assemblymen; the quorum to be five, of which one had to be a Councillor. The Act made handsome appropriations to the fortifications and empowered the Commissioners to draw direct on the Receiver General.[17] An examination of Trelawny's despatches reveals that he did not inform the Board of Trade of this radical experiment, and the extraordinary thing was that the Boards' legal adviser, Francis Fane, when a copy of the Act came before him for scrutiny, reported "No objection" to it![18] Throughout the rest of Trelawny's long administration—it lasted from 1738 to 1752—this method of managing the fortifications remained unchanged, much to the satisfaction of the House, which, if not always proud of the state of the forts, at least had the satisfaction of having the predominant hand in their control.

But what a shock was in store for the planters when Admiral Charles Knowles was appointed Trelawny's successor! Knowles as a naval officer had served on the West India station and knew Jamaica thoroughly.[19] He knew its extravagance and its inefficiency

all too well, and strongly disapproved of both. One of the many things he objected to was the Commissioner system of managing the fortifications and, during his short but stormy administration, he insisted on taking their control into his own hands.[20] Knowles's successor, Lieutenant Governor Moore, however, reverted to a modified form of Trelawny's Board of Commissioners, the main difference being that Moore insisted on the Governor or Commander-in-Chief being one of its members, though without any pre-eminence.[21]

Needless to say this did not satisfy the able but somewhat autocratic William Henry Lyttelton when he assumed the administration in 1762. While not challenging the principle of managing the fortifications by means of a Board of Commissioners, Lyttelton demanded that due weight be paid to the Governor's authority as the most responsible member of that Board. Accordingly the next *Commissioner of Fortifications Act* (1763), in naming the Governor, four Councillors and twenty-two Assemblymen to be its members, was careful only to empower them (or any five of them, of which one was to be a Councillor) "jointly with his Excellency the Governor" to manage the fortifications; and ordained that money should issue only "by orders under the hand . . . of the Governor . . . jointly with the said Commissioners or any five of them, of which one to be a Councillor". The Governor's pre-eminence of membership was thus safeguarded, and the fact that his signature was made an indispensable condition to the making of all payments did give him an important check on the actions of the Commissioners as a whole.[22] All things considered, this was no more than reasonable, and many a time must have compelled the spirit of compromise to prevail, the Governor's signature and that of one Councillor being as necessary for the issue of all warrants as those of the Assembly's quota, and vice versa. Accordingly this continued to be the standard pattern for the remainder of our period, though it is clear that most governors, instead of making the most of their pre-eminent position on the Board, were content to allow the Councillors and Assemblymen the lion's share of decision in matters relating to the work.

In 1768 the Act named no fewer than thirty-seven Assemblymen to be the House's quota on the Board; the Act of 1775 named twenty-eight; but finally in 1778[23] the entire House and Council were appointed to join the Governor in membership, and this remained the practice to the end of our period and beyond. Finally, from 1769 onwards the jurisdiction of the Board was enlarged to include the management of the Public Buildings[24]—which meant

mainly the new Assembly House, the King's House and other public buildings in Spanish Town. Thus in this very important matter of the care and extension of all fortifications and the principal public buildings, the whole legislature became converted into an administrative department in which the Governor, by growing custom, had little more influence and authority than, say, the Speaker or any other person of respect and eminence.[25]

What were the results of this commissioner practice? Were the fortifications and other works better managed than they had previously been? Unfortunately the answer—if we are to believe the various governors—is in the negative. Both Dalling and his successor Archibald Campbell constantly lamented the state of the island fortifications which, despite the expenditure of "great sums of money", had "from the stupidity, ignorance and perhaps knavery of the engineers employed, not a single work of consequence to answer the immoderate expense".[26] Both these governors strongly advocated that the imperial government assume full responsibility (including expense) for the island fortifications, a course which would doubtless incense the Assembly and the planters as being an infringement of their freedom and a "superseding of their own engineer"[27] but they were convinced that, when they saw the results that would accrue from such a course, even these would agree. Failing this, Campbell favoured handing over control of the fortifications to a special body to consist of the Governor and Council and the Commanding Officer of His Majesty's troops, for he declared that "the political contests of Jamaica for some time past point out the impropriety of leaving the sole direction of the forts and fortifications to the Assembly, who avail themselves of such powers to manifest their disrespect and ill-will to a governor, by putting a stop to military works, however essential to the safety of the island".[28] If a charge like this was even half-true, the situation must indeed have been serious. Nevertheless the imperial authorities, already in despair over the turn colonial affairs had taken in North America, were totally unwilling to accept either the responsibility or the expense of such an arrangement, nor would the Assembly ever have consented. The only thing done was that the House, itself perturbed over the wastefulness of the efforts done upon the fortifications, resolved to have as much of the work as possible done by contract, as a possible means of avoiding extravagance.[29]

§4. Parties Against Maroons and Runaway Slaves

Another service in which the Assembly came to encroach on the administrative rights of the Executive was the fitting out of parties for the suppression of the Maroons and runaway slaves. The earliest Acts for this purpose now discoverable date from the end of the seventeenth century, and commonly show the Assembly, through commissioners of its own choosing, keeping the payment of such parties within its own control, while leaving the actual raising and directing of them to the Governor and Council, to whom such power rightfully belonged. The same general arrangements were continued into the early part of the succeeding century, the House devising its own means of provisioning and paying such parties but still entrusting the direction to the rightful Executive.[30] In 1717 a permanent Act was passed to encourage voluntary action, the Governor—or even the Commanding Officer of Militia in every parish—being empowered to commission commanders to such parties as should go out voluntarily against rebellious negroes, and offered a substantial reward for every rebel taken dead or alive.[31]

But so great grew the dangers from this quarter that voluntary action proved quite inadequate and great organised parties had to be sent out against them. For some years the royal Instruction of 1718, forbidding any further commissioner action in the raising or spending of taxes, prevented the setting up of commissioners to fit out and pay such forces which were accordingly provisioned and paid by the Receiver General and controlled by the Governor and Council.[32] After a while, however, the House began to revert to the commissioner practices of former years. For instance, in framing an Act in 1730 sending out parties from several parishes, it stipulated that in each parish the fitting out and provisioning be done by commissioners chosen by itself, a fair proportion of whom were Assemblymen. The Act entrusted these commissioners with the complete direction of each party, allowing them even to appoint the commanders, the only clause safeguarding the Governor's authority being that each appointment must receive his approval. In view of the fact that these were only parish parties, Governor Hunter saw little to object to in these arrangments and gave the Act his cheerful consent. From the Assembly's point of view the plan was so satisfactory that the following year it was continued and even extended.[33] No wonder, therefore, that when in 1732 two men named Peters and Lee came forward with an offer to lead a large party out, the representatives felt quite free to accept it. After themselves doing most of the

preparatory organising, they passed a bill to provide for it, appointed Peters as commander, and sent it up to the Council which also approved it. In due course it came before Hunter, who despite the fact that he had a very poor opinion of Peters, yet gave it his assent, mainly because the need was urgent, and the issuing of instructions to Peters was still left in his hands.[34]

Next year much the same thing occurred again. This time two fellows named Lamb and Williams offered to raise a large party and lead it against the rebel town near Port Antonio if only the Government would provide the means. The offer was made in the first instance to the Governor and Council who submitted it in due course to the Assembly which, approving the venture, straightway began negotiating with Lamb and Williams, made plans for a large expedition involving the building of one or more barracks in the mountains, and then drew up a bill to provide for it, in which the whole control was vested in commissioners—most of whom were of their own House. So active had been the Assembly's preparations, so complete their plans, and so unquestioning their assumption that Council would as a matter of course approve the whole venture, that the latter were offended, and when the measure came before them they indignantly rejected it on the grounds that "it tended in general to wrest the power out of the hands of the Governor". This action placed the representatives in a most unpleasant fix since they had committed themselves so unreservedly to the expedition that they had already despatched several groups to Port Antonio in readiness. Accordingly they charged the Council with obstruction, but the latter replied that they were "not conscious of having obstructed the public affairs otherwise than in not suffering the House to assume the whole power of government". They had seen, they declared, "the House enlist men, appoint officers, direct their marches, and several other extravagances of that nature".[35] The Houses being thus at loggerheads, public business came practically to a standstill, but the Council proved adamant and the representatives had finally to call the expedition off. Their position was quite untenable and two prorogations in rapid succession brought them to their senses. When later that same year they returned to the matter of despatching parties we find them adopting a more reasonable attitude. To make up for lost time they provided for a body of the regular troops to go out against the rebels, the Governor naturally having the whole direction of the enterprise.[36]

This, however, did not prejudice the future unduly, the House still being free to regulate the method of raising, financing, and fitting

out parties so long as the direction of the venture was left to the correct Executive. The great pacification of the Maroons which was accomplished by Governor Edward Trelawny in 1738-9 greatly reduced the dangers and alarms from rebellious negroes, so that after that time the need for specially organised parties practically ceased, volunteer parties sent out under the terms of the permanent Act of 1717 (as modified in later years) being generally sufficient to cope with the occasional emergency as it arose,[37] and on all such occasions the direction of the enterprise lay with the Governor.

§ 5. Barrack Building

The earliest instance of barrack building appears to have taken place in 1703 when Lieutenant Governor Handasyd, being apprised of the approach of four hundred extra regular troops for the island, recommended the Assembly to make plans "for their refreshment and subsistence". Previously the regular troops had simply been billeted on private townspeople, taverns and estate owners; but the House now decided, while billeting most of the newcomers in the usual way, to house about a hundred of them in or near the forts at Port Royal. Accordingly it appropriated a sum of money to erect a barracks in the vicinity of Fort Charles and appointed three commissioners to supervise the building of it. For some reason the year ended without anything being done, so next year provision was again made for it and it appears to have been erected.[38]

The next time that barracks were proposed was in connection with the sending out of parties against the Maroons and runaway slaves, the barracks in this case being redoubts of sufficient size and strength in various parts of the island to serve as bases from which attacks could be launched against the rebels. Who first thought of this plan it is now impossible to tell, but it arose in connection with the proposals of Lamb and Williams placed before the legislature in 1733, when the representatives waxed so enthusiastic in their preparations that their zeal led them into violent conflict with the Council and the suspension of the whole enterprise. When, however, these differences were overcome the House reverted to the barracks project and drew up bills, subsequently agreed to by Council and assented to by the Governor, to provide for their construction in many key parts of the island. The first of these barracks was built in Westmoreland parish near the head of the Great River, and others followed in rapid succession at Cave River in Clarendon, Hobby's

and Ugly River in St. George's, Flint River in St. Mary's, near Nassau in St. Elizabeth's, Manchioneal Bay in Portland, and several other places. The result was that by 1738 the Maroon and other rebel villages had been effectively hemmed around with stockades, a thing which greatly facilitated the settlement which Governor Edward Trelawny made with them shortly afterwards.

Most of these barracks were built by means of commissioner action, the commissioners, some of whom were Assemblymen, being appointed in the Acts concerned.[39] Such as were not built by commissioners were built by parish action. These barrack Acts were unquestionably patriotic in spirit and loyal in intent, but nevertheless did involve considerable popular usurpation of the executive rights of the Governor and Council. Despite occasional face-saving clauses about "the Governor's authority" the Acts gave full effective management to the commissioners, except that the Governor's right to issue directions to the parties sent out against the rebels was always respected. After the pacification of the Maroons the need for further barracks practically ceased and upon the parish authorities fell the responsibility of keeping the existing ones in repair. In later years if barracks in the country parishes were occasionally required for the quartering of regular troops, it was likewise the responsibility of each parish to provide them:[40] if, on the other hand, they were required in or about the forts or main centres, it was up to the Commissioners of Fortifications to supply them or else to the legislature by commissioner action to erect them.[41]

§ 6. Public Buildings and Similar Undertakings

The number of public buildings required for civil and judicial purposes in early Jamaica was small. A few small courthouses in the various precincts, a Supreme Court building in Spanish Town, a gaol or two, a customs office, a residence for the Governor, a place of meeting for the Governor and Council and another for the Assembly, were about all that were required until the beginning of the eighteenth century. The fact that the principal offices in the island were nearly all granted by letters patent meant that the island government was freed from the obligation to provide accommodation for them, the patentee or his deputy having to provide his own quarters. Up till 1685, for instance, the deputy Provost Marshal even provided his own gaol! For we find that the Lieutenant Governor on 25th February that year recommended the Council to build a prison upon part of the King's land at Port Royal, "there having

been hitherto none in this island . . . [save] that . . . belonging to the late patentee for the Marshal's place, which would now be converted to other uses whereby the island would be wholly desitute of a place of security to keep prisoners in".[42] Until after 1730 there is no evidence of the Assembly ever encroaching on the Governor and Council's right to build, furnish and maintain public buildings, except in the very natural particular that the representatives from the earliest times seem to have erected and maintained out of public funds their own Assembly House.[43] It is true that the Assembly was occasionally consulted about the building and repair of public buildings, as when Governor Handasyd in 1710 recommended to it the repairing of the gaol in Spanish Town, or when Governor Lawes in 1719 tried—though in vain—to persuade it into erecting a public building there to house the several public offices; but it always seems to have left the direction of such works to the Governor and Council.

In 1731, however, Governor Hunter recommended the building of a new gaol in Spanish Town and the House voted a reasonable sum for the purpose. While it did not presume to appoint commissioners of its own to do the work, it did take a very practical interest in the way it was carried out, even to the length of having a plan submitted to itself as well as to Council. Nevertheless the Governor and Council retained the major responsibility for overseeing the work which was done by contract.[44] Yet that same year the legislature, having agreed to the making of improvements at the mineral springs at the Bath, appropriated money to the work and appointed two Councillors and several Assemblymen as commissioners to survey the site and erect a large building on it.[45] In the same way some years later when the legislature took in hand the erection of a great new Assembly House in Spanish Town (to serve as a meeting place for both Council and Assembly) the work was entrusted to a body of commissioners consisting of three Councillors and ten Assemblymen, with full authority to design, lay out, and construct the building. An initial grant of £6000 was made for it and the commissioners given an independent right to draw on it.[46] If a commissioner were to resign or die, power was given his fellow commissioners to select another out of the same House to take his place. The scheme grew somewhat as time went on, accommodation for the chief public offices being also provided and substantial additional grants being made. Thus these Commissioners for the Public Buildings became for a long time an active and responsible public body, being revived and strengthened in 1759[47] in order to erect the building of the new "King's House" (or Governor's residence) then about to begin.

The commissioner principle for the management of public buildings being so thoroughly inaugurated, it is not surprising that it became the general practice from then on. When the division of the island into three counties required the erection at treasury expense of gaols at Kingston and Savanna la Mar to serve the needs of the new courts there, the justices at each place were appointed commissioners for the work.[48] In 1759, too, at the same time as the erection of the new King's House was being undertaken, the legislature decided to buy a country estate or "pen" for the use of the Governor, and three commissioners—the senior Councillor, the Chief Justice, and the Speaker of the Assembly—were appointed to purchase a suitable property.[49] In 1773, when similar but smaller provision was made for a residence for the naval commander-in-chief on the Jamaica station, the commissioners consisted entirely of Assemblymen. Three years later when a hospital was contemplated commissioners consisting of the Assemblymen and churchwardens for Kingston, Port Royal and St. Catherine were empowered to rent or buy a suitable building for the purpose in Kingston. The success of the hospital then encouraged the legislature to think about the erection of a public workhouse at Kingston, with the result that in the following year (1777) an almost identical body of commissioners was set up to build one.[50]

In 1769 a notable step was taken when the Assembly moved to combine the functions of the Commissioners of the Public Buildings with those of the Commissioners of Forts and Fortifications, and Governor and Council agreeing, the combined body became known as the "Commissioners of Forts, Fortifications and Public Buildings". At the time the Board consisted of the Governor, seven Councillors and eighteen Assemblymen, but it steadily grew in numbers until from 1778 onwards it comprised the entire legislature.[51] Thus in the realm of public buildings as well as in that of fortifications the legislature, by one means or another, by 1783 had come to usurp complete executive jurisdiction, reducing the Governor's authority to negligible proportions, and making the local inhabitants practically masters in their own house.

§ 7. Highways, Bridges and Kingston Harbour

The making and repair of roads and bridges was normally the responsibility of the parish authorities, but occasionally the construction of trunk roads and expensive bridges required legislative sanction and even treasury grants. When the road from Clarendon

to St. Elizabeth's over One Eye Savanna was proposed, a special Act (1705) was passed setting up a body of commissioners—partly Assemblymen and partly J.P.s and vestrymen—to direct the efforts of surveyors and work parties in laying it down. Some years later when a road from the Cave in the parish of Westmoreland over the mountains to Montego Bay was suggested, the same method was employed; and again in the making of the road from Pepper Plantation in St. Elizabeth's over May Day Hills to St. Iago Savannah in the parish of Clarendon.[52]

After 1750, however, the legislature, following English models, did a good deal of its road making and repair by means of turnpike trusts, each set up by Act of Assembly. The trustees were invariably named in the Act and usually consisted of selected Councillors, Assemblymen, and other leading planters interested in the part concerned. Under the stimulus of turnpike action the road system benefited considerably, one or two new roads being built to link up existing thoroughfares, and several of the older highways being greatly improved.[53] The legislature often assisted with treasury grants and by the middle sixties public expenditure on roads had become so heavy that the Assembly in 1768 set up a committee of its own members to inquire into all road expenditure and this proved so useful that it became a regular sessional committee. In 1771 the House ordered "that all motions made for money to be laid out on roads . . . shall be referred to the [Road] Committee . . . that they may examine into the necessity of granting such money". It is clear that in a number of cases grants were wastefully spent, for in 1776 the Committee recommended to the Assembly that in every future road project "one of the commissioners [entrusted with the grant] shall be a member of this House, who may be accountable for any abuses committed".[54] Once again, therefore, the Assembly is seen arrogating to itself a definitely executive task, viz. keeping a watchful eye on all road works carried out at the public expense, and deciding what new proposals should, or should not be supported. Indeed, so meticulous did this scrutiny become that we find the Assembly on 19th December, 1781, actually resolving "that no money shall in future be granted by the House for any roads without a diagram of the said roads being laid before the House."[55] The Assembly was thus becoming something of a Highways Board as well as a public works authority and Treasury Board!

So far as bridges were concerned, the building of country bridges (where built at all) was the responsibility of the parish authorities, but bridges over the Rio Cobre, being so near the chief towns, were

of such importance to the island as a whole that their erection and upkeep might justifiably call for special provision. In an Act passed in 1724 for building "one or more bridges over the Rio Cobre" at the Bog Walk, a body of commissioners consisting of eleven Assemblymen and several private citizens was set up to build suitable bridges over the river at places where it crossed and recrossed the "River road" from St. Thomas to St. Catherine, with power to tax the people of these two parishes, impress negroes, and take all other steps necessary.[56] Just over forty years later considerable agitation arose to build a new bridge over the Cobre to carry the Spanish Town-Kingston Road. Those advocating the step were optimistic enough to believe that the £5000 odd required to build the bridge would be forthcoming by public subscription if only suitable appeal were made. Therefore the first Act (1767) to sanction it merely set up a body of eleven Assemblymen and several other people as commissioners to conduct the appeal and get on with the job. Not unnaturally, however, this scheme fell flat for lack of response, so a further Act (1774) reconstituted it on a turnpike basis, this time with two bodies of commissioners, one (mainly of Assemblymen) to go ahead with the bridge, and the other (wholly Assemblymen) to build a new stretch of road for part of the way from Kingston; the *combined* commissioners being made trustees for the entire thoroughfare (road and bridge) from Spanish Town to Kingston, with power to raise funds not only by public appeals but also by a road toll. Still the project hung fire for lack of funds, so the following year a third Act was passed, incorporating the whole body of commissioners "a body politic" and giving them power to borrow money on the security of the toll—from the Treasury, if all else failed. At long last progress was possible and the work began. It took a fairly long time and cost considerably more than was first expected, but at last it was completed. Thus the care of the most important bridge and thoroughfare in the island was vested in commissioners, a good proportion of whom were Assemblymen.[57]

So far as Kingston Harbour is concerned the following are the main facts. Until the disastrous earthquake of 1692 and the great fire of January, 1703, Port Royal was the chief port in the island, but from the time of the fire it rapidly declined, giving place to Kingston[58] as the chief port of entry. The wharves at Port Royal and the first wharves at Kingston were undoubtedly built on the Governor and Council's authority, probably with naval help. But as the eighteenth century wore on, the Assembly began to take a strong interest in harbour affairs. In 1744 when increased traffic required a

more systematic regulation of the harbour, and the appointment of a water-bailiff or harbour master, the legislature passed an Act appointing a new scale of harbour dues, and setting up a Harbour Trust to make regulations for the control of all vessels using the harbour and to appoint a water-bailiff to see that these were carried out, his salary to be met out of the dues. The original trustees consisted of a councillor, three Assemblymen (the then members for Kingston) and five private citizens.[59] The Trust did not give lasting satisfaction, however, and sixteen years later it was replaced by a Board of Commissioners consisting of seven Assemblymen and six private citizens who were empowered to frame harbour regulations and generally direct the water-bailiff in his duties. Strangely enough the Act provided that the latter was thenceforward to be appointed by the Governor. Nevertheless the hold of the Assembly upon the Harbour Board continued to increase until in 1769 its membership consisted of the Speaker of the House, no fewer than ten other named Assemblymen and only three private citizens. But this proved a most unwise tendency, for both Speaker and Assemblymen were far too busily engaged on their normal duties to be able to spare time for harbour affairs. Consequently in 1775 a drastic alteration was made. The Assembly withdrew from all participation and vested the control of the Harbour in the Justices and Vestry of the parish of Kingston.[60]

§ 8. Assisted Immigration

Jamaica, with its large area yet meagre population, was the only British West Indian colony in the eighteenth century which needed to encourage white immigration. Its European population in 1693—after nearly forty years of English occupation—was less than 8,000 and its negro population only 9,500. The negroes owing to the slave trade were increasing rapidly, the whites hardly at all. In view of the rapid increase in the negro population the legislature felt that it must do all in its power to attract white settlers. Accordingly in 1693 it passed the first of what were to become a whole series of laws to encourage immigration. This, a five years' Act, raised a fund out of which to pay the passage money of all such immigrants as could be attracted from the British Isles and North America, and set up a body of commissioners (two Councillors and five Assemblymen) to advertise this overseas. These commissioners were to choose one of themselves to be treasurer who was responsible for receiving and spending the money as the commissioners directed.[61]

Similar provision was made by an Act of 1716 which placed a fund in the hands of certain commissioners (five Councillors, nine Assemblymen and one other) half of which was to be used to pay the passages of immigrants and the other half to be laid out in the purchase of cheap lands to be granted by the commissioners *free* to the new settlers at the rate of thirty acres per person in each family, "the said grant to be void and the land returned to the commissioners" if the land was not taken up and settled within two years. This Act was disallowed in England in 1717, in part because objection was taken to the commissioner machinery as an infringment of the prerogative.[62]

But despite the imperial frown, commissioner action, though modified, continued still to be employed. Less than four years later in a drive to increase settlement in the north-east part of the island the legislature set up a small body of commissioners (one Councillor and two Assemblymen) to negotiate the purchase of cheap and unsettled land in Portland and district in order that the Governor might be enabled to make free grants to immigrant families at the same rate as before. The following year the compulsory purchase of no less than 30,000 acres of derelict land in the same neighbourhood was sanctioned, and later a body of commissioners was set up to "direct surveyors, . . . lay out . . . and allot" parcels of land to all newcomers desiring them.[63] In 1726 a more generous scale of grants was decided on, each new settler being made eligible for a grant of up to 500 acres in proportion to the number of white men *and* negroes he was prepared to settle on it,[64] and he was given up to five years to fulfil his contract. Ten years later a further 15,000 acres near Manchioneal Harbour and a similar area at or near Norman's Valley were devoted to the settling of immigrants, each man to receive 50 acres for himself, 50 for his wife, 20 for each child and 10 for each slave; and still further steps were taken to complete the closer settling of Portland. Commissioners were still the chosen machinery for the allocation of grants and they were fairly independent of the Governor and Council's authority.[65]

The net result of all this free land settlement was, however, disappointing. In 1741 there were still only 10,000[66] white people in the island. The way in which the condition for free land grants had been relaxed in 1726 to allow of grants not only in proportion to white people settled on the land, but also in proportion to the numbers of negroes introduced, undoubtedly stimulated settlement, but it was mainly settlement of the characteristic plantation kind—three or four white persons working an estate with up to ten times that

number of slaves. It was becoming clear that Jamaica would never be a white man's country. The climate, for one thing, was unsuitable, but the economic factor was the crucial one—the fact that no white worker could compete with slave labour. The only white person who could with confidence take up land was a man with capital enough to employ slaves. Without doubt several score of poor families did settle; and a good many by enterprise and thrift gradually managed to buy sufficient slaves to work their holdings in the plantation way. But a good number found the task impossible, the Acts themselves admitting that grants were often "thrown up" or else just allowed to lie neglected for lack of means to develop them. Whereas the white population in nearly fifty years (1693-1741) increased by only two or three thousand, the negro population had multiplied more than ten-fold, there being 100,000 negroes in Jamaica by 1741.

Nevertheless the legislature was not dismayed, and made a valiant effort in the middle of the century to redeem the situation. The measure of its earnestness is to be seen in the generosity of the scheme it devised. By *An Act for the better . . . encouragement of white families to become settlers* (1749) it set aside what was considered the large sum of £6,000 a year to advertise in Britain and North America for immigrants, pay their passage money over, lodge them for a time on arrival, settle each family *free* on a twenty acre freehold with cottage and one slave, and exempt them from all public and parochial taxes for the space of seven years. Any tradesman emigrating to Jamaica was guaranteed a free passage plus a bounty of £10 on his arrival. Furthermore, since the legislature hoped that a good many immigrant families would take up residence on or about the existing estates and so strengthen the proportion of whites to negroes there, it offered a premium of £145 to every estate owner who would take such a family, provide it with a twenty acre freehold, a cottage and a slave, and also the sum of £20 to make a start with. To administer the scheme the Act set up a Board of Commissioners consisting of the entire legislature, i.e. the Governor and Council and the whole Assembly. It would be pleasant to be able to report that the scheme met with the success that it deserved, but it was not so. As drawn up in 1749 it was to remain in operation for fourteen years, but the results—considering the expense—were so disappointing that it was discontinued after only ten, a repealing Act in 1758 providing that the operation of the original Act should cease from and after 1st November, 1759.[67] From then on the legislature seemed too discouraged to try any further full-scale

schemes of assisted immigration, the only encouragements after that being the bounties and rewards that might have been claimable by ship's masters for the bringing over of white people, under an old and well-nigh obsolete Act of 1703.[68]

This account of land settlement and immigration policy is of some interest not only for its own sake but also for the way it shows how, in any scheme of consequence to be met out of the public purse, the legislature tended to usurp the part of the Executive in carrying it out.

Chapter IX

FINANCIAL ADMINISTRATION IN THE LEEWARD ISLANDS

§ 1. Introduction

During the late seventeenth century the administration of the finances throughout all the Leeward Islands was remarkable for its extreme unorthodoxy. The local methods of raising money and spending it were characteristically their own, born of their needs, and suited entirely to their own convenience. One universally noticeable feature which fills the student with surprise is the manner in which the island legislators tended to incur expenditure before they raised the revenue with which to meet it. This is not so unnatural as may at first appear. Within every island most works and services were ordered upon the public credit, and only when the resultant accounts grew too voluminous to be any longer neglected, did the legislature bestir itself to raise fresh taxes out of which to pay them.

But before any work could be undertaken at the public expense in any of the islands in the late seventeenth century, the matter had to meet with the joint approval of both Houses. It was open to either body to initiate such a proposal, the Assembly as well as the Council being accorded an unquestioned right to propose any service requiring an appropriation from the public funds.[1] Most schemes, however, originated with Council, who made a practice of submitting simple proposals to the Assembly, suggesting that such and such a work be undertaken at the public expense. Proposed by the President and Council of St. Christopher to the Assembly, "that care . . . be taken for the speedy fitting of his Majesty's fort at Cleverley's Hill". Proposed by the Council of Nevis to the Assembly, "that care be taken to strengthen the prison which the marshal complains will not hold his prisoners".[2] The Assembly having agreed to the work, the Council would be informed and the matter could be carried into early effect. In connection with the suggested repair of the Nevis prison, for example, the lower House simply agreed that "it be forthwith repaired at the country's charge". It should be noted that in no island did the Council ever submit estimates of the

conjectured cost of any scheme which it might propose. If the representatives wished to ascertain this they could do so among themselves, but as a rule they were content simply to authorise the work, with the cheerful intention of meeting all reasonable charges which might come of it.

Only under special circumstances were the Governor and Council permitted to incur expenditure without the approval of the lower House. In Montserrat for example, as late as 1727 the Lieutenant Governor and Council of their own authority, at a time when the Assembly was not in session, ordered the Treasurer to put the island prison into good repair. So, too, in times of martial law the early Governors and Councils enjoyed a freer spending power, although insufficient evidence remains to show how great this freedom really was.[3]

But such exceptions in no way mar the general rule. By the close of the seventeenth century it had become clearly established that no expenditure incurred by one House without the approval of the other could be met from the public treasury, but would remain instead as a private charge upon the body responsible for its authorisation. In 1697 a certain Captain Perry was commissioned by the Nevis Council to carry a shipload of French prisoners back to Guadaloupe. Having performed this service he submitted his account to the legislature for payment. When the Council sent it down for the examination of the Assembly the latter at once resolved "that the charge of thirty pounds . . . brought against the country by Captain Perry for . . . sending to Guadaloupe the French prisoners of war . . . be not allowed the said Perry, being done only by order of the Council without an Assembly".[4] In a similar fashion, when Governor Parke, in 1709, with the Council's approval, gave orders that two sloops be taken up for the service of the island of Antigua, and later submitted to the Assembly the accounts relating to the hire and maintenance of these two vessels, the House definitely refused to meet the charge, on the grounds that the service had been undertaken without its consent.[5]

So strong had this principle become by the opening of the eighteenth century, that legislative sanction was acquired for it under the terms of several of the local tax Acts, chief among which was the Antiguan *Poll Tax Act* of 24th June, 1711, which ordained that all its proceeds were "to be applied to the public use of the island by order of the Governor, Council and Assembly . . . and not otherwise".[6] It is no less significant that none of the tax Acts passed prior to the year 1711[7] ever contained specific mention of the uses to

which their proceeds were to be put. Such appropriation clauses were entirely unnecessary, since the prevailing system of joint authorisation was itself a sufficient safeguard against any serious misapplication of the public funds.

§ 2. Preparing for Supply

As we have already seen, the accounts which related to all properly sanctioned undertakings were allowed to accumulate[8] until their volume grew so large as to demand speedy settlement. Only when this stage was reached did the legislature raise fresh revenue sufficient to extinguish them, and perhaps leave a small surplus in the treasury with which to meet the charges of the immediate future.[9] All such "public accounts" were examined, adjusted, and passed for payment by the Assembly as well as the Council of each island. In Antigua the manner of doing this differed in detail though not in essence from that which prevailed in the sister islands.

In the latter—that is, St. Christopher, Nevis and Montserrat—the accounts were first examined by a small joint committee of the legislature, which had the authority to judge the reasonableness of each claim, with power to reduce it or even reject it altogether if it thought fit. This committee then reported to both Houses the respective amounts which it found to be justly owing upon each account. The sum total of such accounts represented a complete estimate of the existing indebtedness. The committee's report thus served a double purpose. It indicated first the sum which should be allowed each creditor in respect of his claim, and second, the minimum revenue which would have to be raised in order to wipe off the existing debt. It was generally approved by each House without amendment, and the way thus prepared both for raising the new revenue and for paying the expectant creditors.[10] Sometimes an account of a specially urgent nature might receive immediate attention from the legislature, without having to await the periodical settlement. But such a claim had, like the rest, to pass the scrutiny of each House before it could be paid.

In Antigua the public accounts were not subjected to quite the same delay as they were in the other islands. As each claim or batch of claims arrived, it was adjusted first in one House and then in the other, either body having power to diminish it or even reject it altogether if it appeared unreasonable. In the case of all satisfactory accounts, orders were issued immediately to authorise their payment

from the public treasury. But the issue of such an order was no guarantee of immediate settlement; the recipients being forced to retain their warrants until such time as a fresh tax would be passed to provide for their satisfaction. When this volume of public creditors became too great to be longer ignored, the legislature generally did one of two things. Either it appointed a joint committee of public accounts to bring in an estimate of the total debt, or else it simply commanded the Treasurer to lay before it "an abstract of the country's debts".[11] In either case it provided itself with the appropriate material upon which to base fresh taxation.

§ 3. Procedure in Tax Legislation

In the raising of new taxes the island Councils retained their right of participation for a much longer period than the House of Lords did in England. Right down to the second decade of the eighteenth century it was the constant practice of all islands to prepare tax bills in a joint committee of both Houses, though it was customary to read them first in the Assembly. Towards the close of Governor Hamilton's administration, however, the planters in both St Christopher and Antigua evinced a growing disposition to give up the practice of joint preparation. The *Poll Tax Act* of 1718 is the last in St Christopher known to have been so prepared, while an Antiguan Act of February 1719, drawn up solely in the Assembly, marks the beginning of a permanent change in the tax procedure of that colony.[12] In Nevis the change followed soon afterwards. In 1724 the Assembly ventured to prepare a new levy bill in a committee composed entirely of its own members. The measure having passed the House, was sent to the Council for approval. The latter at once protested against the innovation, demanding a return to the practice of past years. A dispute arising, both sides submitted their case to Governor Hart, who gave his opinion in favour of the Assembly. He informed the Councillors that they were in the wrong, because according to English precedent, the popular House possessed the sole power of originating taxation.[13] On the other hand, the Council of Montserrat continued to enjoy for a much longer period its right to join with the Assembly in the preparation of money bills, the last Act to be so prepared being the Poll Tax of 1745. Thenceforward in that island also, every new tax was prepared by the Assembly alone, and only after having passed that House was it sent up for the Council's approval.[14]

In all islands except Montserrat the right of Councils to tax amendment did not long survive the repudiation of their claim to assist in its preparation. The Nevis Assembly, soon after its victory in 1724, assumed to itself the sole management of all money bills, allowing the Council a right of amendment only in matters of purely formal concern. No attempted alteration of the tax rates or other important sections of a bill was ever tolerated. The fashion soon spread to other parts. In 1728 the Antiguan House, resolving to model itself upon the practices of the House of Commons, denied to the Council any further amendment, a determination to which they adhered tenaciously throughout the remainder of the century. The Assembly of St. Christopher began to strain soon afterwards for the same exclusive power, with the result that by 1739 the local Council acknowledged its inability any longer to amend.[15] The Montserrat Council, on the other hand, continued to enjoy its amending power right down to the very close of our period of review, a *Liquor Excise Act* of 1772 being successfully amended without the slightest protest from the Assembly.[16]

It is important to notice that the local Assemblies from earliest times down to the close of the eighteenth century raised fresh revenues and continued old ones simply as a matter of course, without any previous request from the Executive. This marked a further particular in which island procedure differed radically from that of the Imperial Parliament. In England the management of finance was traditionally the concern of the Crown, and all proposals for fresh revenue emanated from the government of the day. The Commons merely used their discretion in yielding what was asked of them when it was asked of them. In the islands, on the other hand, the maintenance of the public credit was thought to be as much the concern of the Assembly as it was that of the Executive. If public indebtedness demanded a fresh tax, or the expiry of an existing law required the passage of a continuing Act, it seldom needed a reminder from the Governor and Council to effect the remedy. Instead the separate Assemblies, quite frequently of their own accord, took the initial steps to cope with the emergency.[17]

Such a custom occasionally produced most unexpected consequences. Cases are on record where an Assembly in deciding that the time was ripe for the raising of a fresh tax, thereby worked in direct opposition to the wishes of the Governor and Council. Sometimes too, the Board, in debating the tax rates suggested by the lower House, considered these excessive, and so proposed a reduction. For the government of the day to be found thus diminishing

the amount of proffered taxation would certainly have sounded fanciful to an Englishman of the period! A Montserrat Assembly in 1718, after taking into consideration the urgent wants of the local clergy whose salaries—dependent upon the island treasury—had long been unpaid, proposed to the Council that a levy be speedily raised to repair their circumstances. The Board, on the score of island poverty, flatly refused to concur in such a step, whereupon the House, baulked in its good intentions, condemned the attitude of the other as "a great shame and a reflection upon the inhabitants of this . . . colony".[18]

At the close of the seventeenth century the Antiguan Assembly, entirely without any previous request from the Council, came forward with a suggestion that a fresh Poll Tax be raised, and called upon the Board "to concur with us in an order to the Treasurer to bring in an abstract of the country's debts, against such day as may be thought convenient, that we may be the better enabled to raise the said tax as usual and with the least burden to the inhabitants". The Board being agreeable, the Treasurer received his instructions accordingly. At their next meeting the representatives proceeded to examine the figures which he laid before them. Among themselves they determined the amount of revenue to be raised, and fixed the rate of the tax per head. This done, they reported their decisions for the confirmation of the Council, in order that a joint committee might be set up to prepare the necessary bill. After having perused the suggestions, the Board resolved that the proposed rates were too burdensome and would require reduction. This being intimated to the Assembly, they after further discussion agreed to the alteration. Only then was the joint committee set up and the bill prepared in accordance with their final desires.[19] Over thirty years later a similar situation arose in Montserrat, the Council seeking to reduce the rates of taxation which the Assembly had proposed. Upon this occasion however, the House refused to depart from its decisions, thereby forcing the Board to acquiesce in the higher rates in order to save the measure from falling to the ground.[20]

At no time during the seventeenth or eighteenth century did a Governor and Council[21] ever submit to an Assembly any estimates of the anticipated charges of the coming year. Every new tax was intended primarily to extinguish the volume of existing debts, rather than provide funds for the future, though some of the island Assemblies made more systematic provison for future needs than did others. In both St. Christopher and Montserrat, for example, the committees of public accounts towards the end of the eighteenth

century made a practice, previous to the introduction of every new tax, of reporting not only the existing burden of debt, but also an estimate of the more fixed and ascertainable charges which would be sure to require settlement within the ensuing twelve months: Antigua, too, seems from quite early times to have made partial provision for future commitments. The Nevis House, on the other hand, seems to have been the most improvident in this respect, each new tax being passed almost exclusively for the purpose of extinguishing the debts already in existence.[22]

§ 4. Inspection of Accounts and Issue of Public Money, down to 1711

Having now examined the main features which surrounded the raising of the revenue, let us focus our attention upon the question of expenditure and the handling of accounts. We have already seen how the Assemblies, either directly or by means of their representation upon committees of public accounts, enjoyed with Council a co-equal share in the passing of all claims prior to payment. This popular participation in a function which should more properly have been reserved to the rightful Executive, was directly opposed to the wishes of the Crown. Onwards from 1686 the Instructions given to each governor commanded that all public moneys should be paid from out the Treasurer's hands only upon warrants signed by the Governor or Lieutenant Governor of each island, and issued with the consent of the Council. The Assembly was to be permitted a right merely "to view the accounts of money or value of money disposed of by virtue of the laws" made by it.[23] It was the obvious intention of the Crown that the representatives should possess the right to appropriate the revenues to such uses as they desired; that each Governor and Council should possess a free power to devote these revenues to the purposes so allowed; and that each Assembly should have a right to review the vouchers arising from such expenditure in order to see that its wishes concerning the application of the money had been strictly respected.

The royal wishes were however almost completely disregarded. It is to be feared that many of the early governors, preferring the retention of peace to a quarrel on behalf of the prerogative, openly connived at a continuance of joint adjustment.[24] Indeed it was not until 1718 that the Assembly's right to share in the adjustment of public accounts was first challenged. In that year, however, the Council of St. Christopher under the leadership of Lieutenant

General Mathew sought to take independent cognizance of the accounts in the manner which the royal Instruction intended. The local House at once complained of the innovation to Governor Hamilton, who, himself blind to the incompatibility which existed between the prevailing usage and the spirit of his Instructions, gave his judgment in favour of the Assembly, and enjoined the Council to return to the custom of the past.[25]

The right of Assemblies to join in the adjustment of accounts was in itself a most important one, but it was rendered doubly formidable by the fact that they enjoyed a similar right to share in the actual issue of all money from the public treasury. They possessed therefore the means of ensuring that no money was ever paid to a public creditor in excess of that which they had agreed to allow him. By an early Tax Act of 1668 the Antiguan Assembly had secured legal sanction for its claim that the counter-signature of one of its members—in practice the Speaker—should be essential to the validity of every treasury warrant. By 1682 we know that the same usage, with Stapleton's approval, was in existence in Nevis, although soon afterwards the same governor twice refused a similar demand put forward on behalf of the Speaker of St Christopher.[26] The fact that he was quite agreeable to the existence of the practice in the two former islands, indicates that his rejection of the plea from St. Christopher was based upon considerations of policy rather than principle. How much longer the Assembly of that island had to wait before it was allowed this privilege is a matter of pure conjecture. It probably won it before the close of the seventeenth century, for we know it was actively enjoying it early in the eighteenth. By a 1704 *Act for the Treasurer's receiving and paying the Public Stock* it was ordained that all orders on the Treasurer, in order to be valid, must be "signed by the Chief Governor or the Lieutenant Governor, two of the Council, with the Speaker and two more of the Assembly".[27] The early eighteenth century records of Montserrat reveal the fact that there, too, the countersignature of Assembly members was necessary to the validity of any warrant for the payment of money from the Treasurer's hands.[28]

Such a popular jurisdiction over the issue of public money was also in manifest opposition to the royal Instructions. Nevertheless it continued unabated year after year until by an unfortunate mischance it became revealed to the Board of Trade. Towards the close of 1710 a fierce controversy arose in St. Christopher over the right of the Assembly to control not only taxation but the Treasurer as well. Its bitterness attracted the attention of the Board of Trade in England,

who began an immediate examination of the points at issue. Only as a result of this did their attention become drawn to the objectionable nature of the *Treasury Act* of 1704, which was in consequence promptly disallowed early in 1711.[29]

§ 5. Inspection of Accounts and Issue of Public Money, after 1711

The joint issue of public money, though abolished in St. Christopher, continued unaltered in the three sister islands until 1718, when Governor Hamilton, after receiving orders from the Board of Trade to pay more strict obedience to his Instructions, was compelled to oppose any further retention of the custom in the remaining portions of his government.

(i) ANTIGUA, 1718-83.

Calling the Antiguan representatives before him Hamilton explained to them the full import of the Instructions he had just received. After pointing out that he had no option but to obey, he explained that he would no longer be able to acquiesce in their Speaker's countersignature upon treasury warrants. At the same time he expressed his complete willingness to continue allowing them their old-established authority in the adjustment of all accounts.The House in vain strove to induce him to waive obedience to his new orders until a final appeal might be made to the Board of Trade. He refused, and straightway forbade the Speaker's countersignature to any further warrants. But while he so rigidly insisted upon an immediate compliance with his new commands, he did not thereby refuse the House the appeal which it desired to make to the imperial authorities. Indeed, he readily agreed to the passage of a new *Excise Act*, framed in such a manner as to make mention of the Assembly's claim. This was despatched to England under a suspending clause, and came in due course before the Board of Trade. There it served admirably the purpose for which it was designed. It provoked the Board to make a final ruling upon the whole question of Assembly participation in the issue of public money. The Board determined to oppose it at all costs, and the Act was promptly disallowed, thereby spelling what seemed final defeat to the popular claims.

But in the meantime the House had thought of a compromise, by which they designed to yield literal obedience to the royal Instruction, but to defeat its real intent. For the future all accounts should be

submitted as before to the Assembly as well as the Council for adjustment. The former, having determined how much should be allowed upon each one, was thereupon to despatch a formal address to the latter containing an intimation of this amount. This done, an order was to issue from the Governor or Lieutenant Governor to the Treasurer authorising payment of the sum in question. The representatives thus preserved for themselves all the advantages of the original system while they paid a seeming deference to the new. They were still to share in the adjustment, though the resultant accounts were to be signed in a manner in strict literal accord with the royal commands. This scheme was embodied in a fresh Tax Bill which, having passed both Houses, secured Hamilton's assent, and came into immediate operation in the opening months of 1719—a copy of it being sent home for the royal approval.[30] It was never disallowed,[31] with the result that subsequent measures followed almost identically the same form, thereby establishing permanently the procedure which it began. The Assembly, especially after it repudiated in 1728 the Council's right of tax amendment, became the sole manager of all supply. It enjoyed with Council a joint decision concerning all works and services which were undertaken at the public expense; it joined with the Board in the adjustment of all the relevant accounts; and its "address" certifying the amount to be allowed on each claim, was an indispensable condition to the making of all payments. To all effective purposes therefore it still participated in the right of issue.

Only once in future years was the propriety of this system ever challenged. In 1751 Acting-Governor Fleming, fully alive to the completeness with which the Council's discretionary power over finance had been eclipsed, and resentful of the utter powerlessness which had resulted, sought by the rejection of a pending tax bill to compel the House to forego its long-established jurisdiction over the public accounts. He strove by doing so to restore to the Council a free spending power subject only to the appropriation conditions of each Tax Act, and was warmly supported by the Board of Trade in his endeavours. Deadlock ensued, the representatives preferring rather to bankrupt their treasury than raise new revenue at such cost to their privileges. For two years this continued, neither side being willing to capitulate. Finally in 1753 a new governor arrived, in the person of George Thomas, formerly Deputy Governor of Pennsylvania. Before despatching Thomas to the Leeward Islands the Board of Trade had pointed out to him the time-honoured Instruction which defined the procedure to be followed in issuing all public

moneys, and enjoined him "to use his utmost endeavours to induce the Assembly to comply with it".[32] He promised faithfully to do so, but on his arrival found himself totally unable to resist the public clamour. A bankrupt treasury had brought all business to a standstill, yet not a penny would the Assembly yield until its claims were recognised. In desperation the Governor was forced to surrender—to purchase supplies at the expense of his own independence and that of his lieutenants. The Board of Trade, upon hearing of his action, expressed their sorrow that the exigencies of his position had made such a step necessary. They hoped that there would still be time on some future occasion to reopen the matter and compel the Assembly to surrender their ill-gotten gains. But that time was never again to arise. Thomas indeed would have been the very last man to risk popular hostility for so forlorn a cause. The system of joint adjustment had, in fact, been too long established to be so easily overturned. It continued for the future in exactly the same manner as it had existed in the past, the House retaining that co-equality with the Council which has already been described.

(ii) St. Christopher, 1711-83.

The island that suffered most from the changes of the early eighteenth century was St. Christopher. The disallowance of its *Treasury Act* of 1704 had dealt a severe blow to the representatives, but they consoled themselves that, though they had lost their right to share in the issue of public money, they still retained their right to join in the adjustment of the public accounts before payment. But in 1718 the Council sought to debar them from even that function. They protested at once to Governor Hamilton who, blind to the incompatibility that existed between the prevailing custom and the spirit of the royal Instructions, gave his verdict in favour of the Assembly and directed the Council to continue the practice of joint adjustment.

Unfortunately for the representatives, however, the relief which Hamilton so cheerfully gave them was destined to be of short duration. At the close of 1721 a new Governor, John Hart, arrived within the islands. The new appointee had already gained considerable experience in colonial administration from his previous governorship of Maryland. Early in the new year he became involved in a bitter dispute with his Antiguan Council over a matter connected with his salary, and as a result left that island in anger and established his seat of government temporarily in St. Christopher. The new Governor had quite clear views regarding the powers which ought rightfully to belong to each Assembly, in contrast to those which

should fall properly to the discretion of the local Executives. He was prepared to allow to the popular houses all the privileges enjoyed by the Commons in England, but was equally determined to resist their claims to anything more. Both he and his immediate successor, Lord Londonderry, remind us very much in this respect of Sir Richard Dutton, the erstwhile Governor of Barbados.

During his residence in St Christopher, Hart succeeded in persuading the local Assembly to abandon the privileges which it had previously enjoyed in excess of those possessed by the English House. Though the sessional papers of the period are curiously silent upon the actual discussions and arguments which accompanied the change, it is clear that from an early stage in his administration the Assembly surrendered its previous right to share in the adjustment of public accounts.[33] The only safeguard it retained against misapplication of the public funds lay in its right to appropriate each tax to its various uses, and to examine into the subsequent records of how the moneys had been spent.[34] The Council now possessed a legally free hand to spend money to all purposes which had been sanctioned by the tax Acts, to adjust the resultant accounts, and to issue money in payment. The financial administration was thus brought to the very level which the imperial authorities had always desired.

The joint committee of public accounts, being deprived of its former ability to adjust and report upon the unsettled claims of public creditors, now lost all significance and dwindled into rapid obsolescence. The legislature continued its old habit of incurring expenditure considerably in excess of revenue provisions, upon the authority of joint resolution alone, and here again it was the Council and not the committee which possessed the power of adjusting the resultant accounts. Because of this practice of spending in advance of supply, there was always in existence a more or less large body of debts for which no revenue provision had up to the time been made. These, having been adjusted by the Council, always constituted the first charge upon every new tax, and had always to be taken into consideration before this was raised. The representatives, contemplating fresh supply, would pray the Governor "to direct that all the public accounts . . . may be laid before this House" for examination, that they might inform themselves of the existing indebtedness. It also became customary for the Governor and Council to provide the House with an estimate of the anticipated charges of the ensuing year, in order that the forthcoming tax might raise a sufficient surplus to meet these as well.[35]

The freedom thus acquired by the Council during this decade was probably abused, many accounts being passed quite readily for payment which in the earlier days of joint committee jurisdiction would have been gravely questioned and perhaps reduced. The Board was doubtless less critical in its examination of the accounts than a joint committee would have been. The Assembly naturally looked with some longing, therefore, upon the great heap of claims which, at the introduction of every new tax, were known to be awaiting settlement and still unpaid. If only they could regain their old jurisdiction over these, what a saving could be effected for the public treasury!

At last in 1733 the first step was taken towards this end. Just before the introduction of the Poll Tax Bill of that year the House pressed for, and gained, the appointment of a small joint committee to adjust all accounts which were awaiting satisfaction. The measure subsequently passed made provision for the payment only of those claims which this committee had allowed.[36] In the following year the Assembly went yet a step further, by presuming to set up a committee solely of its own members to examine the accounts. The Council at once opposed the innovation, thereby creating such a deadlock that all tax legislation became completely suspended, the Assembly expiring before any agreement could be reached. The dispute dragged on for a further four years, the House dropping its claim to sole adjustment, but persisting in its demand for a share in that function. The Council on the other hand, now fully alive to its danger, denied the representatives any jurisdiction at all in the matter. However, in 1738 and again 1739, a stubborn refusal on the part of the latter to raise any further revenue until their claims were recognised, forced the Board grudgingly to capitulate, it agreeing to a joint committee of adjustment after the fashion of 1733.[37] Eighteen months later the Assembly, wishing to renew supplies, moved once again for the establishment of a joint committee to adjust the public accounts. The Council, now under the vigorous leadership of Lieutenant General Gilbert Fleming, at once opposed any such step. The whole matter blazed up anew, complete deadlock ensuing for a period of over twelve months. The Board, though quite willing to send down the most detailed statements of the existing debts, yet steadfastly refused to allow the representatives any right to adjust the actual claims. At length the House, placing the financial well-being of the island before its own privileges, temporarily surrendered by consenting to raise a fresh tax upon the Council's terms.[38]

Despite this temporary set-back the representatives were determined to leave no stone unturned to gain the victory. In 1744 the

exigencies of the French War compelled Governor Mathew to ask unusually heavy supplies from them, and in order to get them to grant these, he was forced to compromise over the question of the accounts. It was agreed that the *fixed* charges of the administration should lie wholly within the Council's control—in other words, the accounts that related to the permanent military and civil establishments were still to be adjusted and paid at the sole discretion of the Board—but all accounts relating to the *more variable* items of expenditure were to be subject to adjustment by the Assembly as well as the Council, and paid only by mutual consent.[39] Such a step was the beginning of the end: it was impossible for long to continue the division thus attempted, and before many months had elapsed, it was completely abandoned in favour of joint adjustment of all accounts—be their nature or field of origin what it may.[40]

In 1750 Governor Mathew went home on furlough, leaving Lieutenant General Fleming in command during his absence. Fleming had always been resentful of Mathew's capitulation to the popular clamour and he at once engaged in a final attempt to restore the effective powers of each Council over finance. His attitude had not changed one jot throughout the preceding decade—he still regarded any popular jurisdiction in the adjustment of accounts as an unconstitutional and unwarrantable encroachment upon the prerogative. In Antigua, in St. Christopher, in Nevis, and in Montserrat he set himself to oppose any continuance of the practice.

The Assembly of St. Christopher in December, 1750, passed a Tax Bill in which it strove to acquire legislative sanction for its newly won rights. The measure passed the Council but Fleming refused it his assent. At once the old antagonism was revived. The House resolutely refused any further supplies until its rights in the matter were indisputably recognised. The Lieutenant General was equally stubborn, and was fortified in his resolution by the enthusiastic support he received from the Board of Trade. The struggle continued for four years without a penny of fresh revenue being raised. But the arrival of Governor Thomas brought success to the popular advocates in St. Christopher in the same way as it did to those in Antigua. A fresh Act passed early in 1754 received the newcomer's reluctant assent. The legislature now adopted a device very similar to that practised in Antigua since 1719. It was resolved that all moneys raised by each new tax were "to remain in the hands of the Treasurer . . . until such time as orders shall issue to him for the payment thereof by the Commander in Chief of the island for the time being, with the approbation of the Council and Assembly".[41]

It is noticeable that the representatives had begun the quarrel by claiming a right to adjust only the accounts which were outstanding and unpassed at the commencement of fresh tax legislation: they gained as a result of the dispute the far greater privilege of judging the merits of *all* accounts. In actual practice the mode of adjustment followed in St. Christopher was much the same as that followed in Antigua. The House, having received from the Council a batch of accounts requiring settlement, customarily submitted them to a small standing committee of itself which had been set up at the beginning of each session. This body reported its conclusions to the House which, if it confirmed them, simply addressed a communication to the Council stating that "this House has examined the public accounts sent down from your Board, and find the following sums to be due"[42]—then followed a list of the amounts which had been the outcome of its decision.

From 1754 onwards the legislature ceased to appropriate the tax proceeds by means of special clauses in the Act itself.[43] Under the changed financial procedure detailed appropriation terms were no longer necessary. Since a return had been made to the pre-1720 method of passing accounts, a similar reversion was possible to the correspondingly early custom of authorising each separate work or service by a simple joint resolution of both Houses. Henceforth in St. Christopher, as in Antigua, every undertaking had to receive the approval of each House before it could be undertaken at the public expense: the accounts derived from it had to be adjusted by both Houses, and the certificate of the Assembly testifying to its approval became an indispensable condition to the issue of all money in payment.

(iii) Nevis, 1711-83.

The changing fortunes of St. Christopher and Antigua in the early eighteenth century were not without their effects upon the financial procedure of their two sister islands, Nevis and Montserrat—especially upon that of the former. The royal disallowance of the St. Christopher *Treasury Act* caused almost as much unrest in her nearest neighbour as it did in St. Christopher itself. Although it is probable that the Nevis Speaker's countersignature of treasury warrants was not thereby affected, it is clear that the legislature of that island, fearing an extension of the royal prohibition to itself, took steps in advance to safeguard the application of its revenues. The annual *Poll Tax Act* for 1711, for the very first time in Nevis history, contained detailed clauses by which every portion of the

revenue was distinctly allotted to some particular use.[44] Finally, as a result of the Antiguan dispute of 1718, the right of the Nevis Assembly to join with Council in the issue of public money was also denied. In November, 1718, Governor Hamilton issued to his Nevis subordinates explicit directions enjoining them to give a strict obedience to the royal Instruction on the point.[45]

The fact that the legislature had now begun to append specific appropriation terms to its tax measures gave the Executive a legal power to spend money freely upon the purposes indicated. This, if strictly carried out, would have excluded the joint committee of public accounts from practically all useful jurisdiction. But in actual fact the usefulness of the committee was not so much impaired as might first have been expected. This was mainly because the Assembly, in raising each new tax, made only incomplete provision for the future charges that would arise during the coming year. In consequence the legislature as in St. Christopher had still to resort to joint resolution as a means of authorising the conduct of the many works and services for which the Tax Act had made no provision. Since there was no fund in existence for their payment, the accounts which related to these additional items of expenditure had perforce to await settlement until such time as the legislature chose to raise further revenue for their payment. Whenever a new tax was under contemplation it was customary to appoint a joint committee to examine and adjust this volume of accumulated claims, and report them to both Houses.[46] The sums allowed by the committee having been confirmed by each House, the way was clear for the introduction of the new bill. It is clear therefore that the Assembly—by virtue of its representation upon the committee of public accounts and its later power to confirm or reject that body's returns—still continued to share in the right of adjustment. Moreover, on account of its control over taxation, the House was placed in the further position of being able to ensure that provision was made in the new tax for the payment of no accounts save those which it had itself approved.[47]

The right of the representatives to share in the adjustment of outstanding accounts was not denied them till the year 1751. In that year, however, Acting-Governor Fleming—who was already at grips with the Assemblies of St. Christopher and Antigua over the same issue—took occasion to refuse his assent to a Nevis tax bill because it included a clause by which the representatives designed to secure legislative sanction for their long-established custom. He pointed out the constitutional error of their ways and demanded that the objectionable passages be deleted. This they readily consented to

do.[48] But their action was a mere pretence, for they had no intention of yielding up so old and valued a privilege. They kept up the practice in secret until the arrival of Governor Thomas allowed them openly to bring forward their claim in order to secure for it the latter's hesitant consent.

Henceforward a significant alteration was made in the form of passing all new money bills. The appropriation of specific sums to specific purposes was entirely discontinued. In its place they adopted the practice which had lately become established in Antigua and St. Christopher. They ordained that the entire revenue derived from each new tax should be retained within the Treasurer's hands, until paid out in accordance with warrants signed by the Commander-in-Chief of the island, and issued only with the approval of the Assembly as well as the Council. In actual practice the joint approval of both branches of the legislature now became necessary for the authorisation of every public work or service, however small. The accounts relating to these, after having been adjusted by a joint committee, were confirmed for payment by the Assembly, who thereupon despatched to the Council a certificate of the amount to be allowed in respect of each claim. Upon receipt of this "address", The Lieutenant Governor was empowered to issue his warrant authorising the payment of such a sum from out the Treasurer's hands.[49]

(iv) MONTSERRAT, 1711-83.

The only remaining island to be considered is Montserrat. There we find that the financial procedure remained almost unchanged for the whole period of our review. The methods already described as belonging to the late seventeenth century, remained in almost constant operation throughout the whole of the eighteenth. The happenings which took place in the larger islands left no mark upon the practices which prevailed in this smaller and more isolated one. Probably it was its very isolation which preserved it so free from change.

The practices of the late seventeenth century were so well suited to their circumstances that the Montserrat planters, unlike their neighbours, never even experimented with other forms. Governors gave them so little attention that their methods remained almost a closed book to the world outside. Interference from without was almost unknown. They were thus able to pursue the even tenor of their ways, free from the changes of political fortune from which their neighbours suffered. Throughout the whole of the century the

public works and services continued to be authorised by mere joint resolutions of both Houses. The accounts resulting from these continued likewise to be jointly adjusted, either separately in each House, or—as was more common—periodically by joint committee subject to the confirmation of each House.[50]

For a long time the Assembly was content to allow its jurisdiction in this respect to rest solely upon the foundation of past usage, but in 1727 it ventured to place it upon a more secure footing. The *Poll Tax Act* of that year made specific mention of joint adjustment "by the Governor, Council and Assembly", thereby giving a definite legal sanction to the practice. The same device was employed again in the Tax Act of 1739 which devoted a portion of its proceeds to "the payment of . . . the public debts that have been settled by the Council and Assembly, or by a committee appointed by them".[51] Indeed it was not until the acting-governorship of Gilbert Fleming that the Assembly's privilege was ever challenged, but the efforts which he made to restore the prestige of the Councils within the neighbouring islands were extended even to this one. He refused his assent to a Montserrat tax bill because of the way in which it sought to legalise the jurisdiction of the Assembly over accounts. By pointing out the manner in which it infringed the prerogative, he persuaded the legislature to delete all the offending passages.[52] But though these planters, like those of Nevis, formally acquiesced in his demand they nevertheless resolved to continue the practice in secret. To refrain from making objectionable mention of it was one thing: to forswear its exercise was quite another! Upon the arrival of Governor Thomas, they again inserted their claim within a tax bill sent up for his approval. Again objection was made to it, and again they deferred to the Governor's wishes by refraining from making legislative mention of their practice, though they continued to employ it just the same.[53] Not until the mid-seventies did they take any further trouble to demand legal sanction for it. By then, of course, it had already been conceded in all the other islands, and the Montserrat Assembly was allowed it without further delay.[54]

The public accounts having been adjusted in the manner described, orders for payment out of the treasury—called "adjustments"—were issued under the authority of the Council and the Assembly combined. Unlike the Assemblies of all the other islands, the Montserrat House managed throughout the entire eighteenth century[55] to preserve its right to join with the Council in making these actual payments. Despite the fact that Governor Hamilton twice[56] directed the Council's attention to the irregularity of the

practice, the latter seem successfully to have disregarded his behests. Governors gave so little attention to the island that the Council were given every opportunity of evading their duty. Early in the century it would seem that each "adjustment" had to bear the signatures of all the Assemblymen present in the House when it was issued. Later, however, the countersignature of the Speaker was held sufficient to attest the Assembly's approval of the order. In the strictest sense, therefore, the participation of the Montserrat House in the payment of all public moneys was more direct than that enjoyed by any of the neighbouring Assemblies. But, practically speaking, they stood all upon the same effective basis—the certified approval of each House being an indispensable condition to the issue of all money in all islands.

§ 6. Conclusion

Only one thing remains now to be remarked. It followed as a corollary that each Assembly, if given a share in the adjustment of all public accounts, must also be given a right to join in the making of the contracts from which they sprang. How otherwise could they judge equitably the claims of the contractors concerned? Lieutenant General Fleming, when opposing the claims of the St. Christopher Assembly in 1741, clearly foresaw this inevitable result." Your House is assuming . . . a power", he said, "of dictating who shall and who shall not be paid, a province you are incapable of executing with justice . . . till you have arrived at the power of employing and agreeing with the persons for the several services from whence their demands will arise—that is, without seizing the entire administration."[57] The degree to which Fleming was right in his analysis will best be indicated in the following chapter.

Chapter X

PUBLIC WORKS IN THE LEEWARD ISLANDS

§1. Introduction

During the early years of the Restoration each Leeward Island Assembly held its sittings with the Council,[1] thereby constituting a joint body for the discussion of current problems. As the Councils made no division of their business into legislative and executive sections, it followed that the representatives were sometimes present when matters of an essentially executive nature were under consideration, and were permitted to vote along with the Councillors themselves in the making of administrative decisions. Orders and directions were then issued under the joint authority of both Houses.[2] In after years, when each House had commenced to meet separately, the same temper continued, matters of executive interest being regarded as the close concern of the Assembly as well as the Council. The conspicuous absence of all traditional usages and dignities from the relationships which prevailed between the two, made it possible for them to co-operate very closely in the solution of their difficulties.

The representatives, intimately interested in the financing of all public undertaings, felt no less closely interested in the efficiency with which these were carried out. We have already remarked upon the way in which they were able to initiate proposals for administrative works, and were taken into the Council's close confidence in the planning of all new enterprises. A great deal of the superintendence given to public undertakings in such small islands, being necessarily dependent upon the honorary services of public spirited persons, was apt to make heavy inroads upon their time. When therefore the representatives evinced a willingness to undertake a share of these obligations, the Council were nothing loth to allow it to them, as in so doing they relieved themselves of a portion of their burden.

Both Board members and Assemblymen were planters living close together within narrow shores, intimately interested in the problems of each other, and of the community as a whole. Any explanation

of their institutional relationships must be found more in the intimacy of that social condition than in any theoretical deductions from contemporary English usages; it must be found in a study of things as they were, rather than of things as constitutional lawyers would have them be. Comparatively early in the history of every island the representatives came to be allowed an occasional share in the conduct of administrative concerns. A certain service needing to be undertaken, it became not uncommon for a few of the Assembly to be joined with a few from the Council, in order to examine in detail the requirements of the occasion, to estimate the probable cost, to suggest a plan of action and perhaps even to manage and control the actual performance of the task. It is extremely probable that as early as 1673 a joint committee of the Montserrat legislature was given power to contract for, and supervise the construction of, the local court-house and gaol. Three years later the legislature of St. Christopher, being in urgent need of timber for making carriages for the guns, determined to send some sawyers to cut wood in the neighbouring island of Tortola. A joint committee comprising the Governor, one Councillor and three Assemblymen was appointed to draw up an agreement with the sawyers, and to hire a vessel suitable for their voyage. In early Antigua the same joint committee device was not unknown; while in Nevis, as early as 1693, a committee comprising two from each House was set up to purchase some land for the building of a stockade, which was required for the protection of women and children in time of danger. This body was also empowered to hire overseers to supervise a negro labour gang which it was intended to employ upon the work, and was to report its proceedings at the next meeting of the legislature.[3]

This popular participation in the conduct of occasional administrative tasks was quite a spontaneous thing, born of the mutual good-will prevailing between the Council and Assembly, and not the result of any financial influence which the latter was able to wield. Indeed there is no evidence that the early Assemblies ever made use of their financial powers to extort administrative privileges of this nature. But if financial influence played no part in the origin of the system, it did play an important part in its perpetuation. It is surely no coincidence that the eighteenth century which witnessed an increase in the Assembly's control over the finances, witnessed a corresponding increase in their encroachment within the field of public works. The joint committees of the late seventeenth century were neither so numerous nor so independent of the Governor and Council as were those of a century later. Each Governor was still allowed to retain

his correct executive prerogatives, and even where a joint committee of management was interposed between him and the work in hand, it was still looked upon as a body subordinate to him, and subject to his directions.[4] But as the succeeding century advanced, the frequency of joint committee enterprise increased, and with it the degree of independence which came to be allowed such bodies. In matters like the repair of fortifications, the hiring of sloops, the construction and repair of public buildings, the fitting out of expeditions against the French, or the performance of any other service at the public expense, the joint committee became regarded as the most satisfactory medium of control.

§ 2. Fortifications and Other Means of Defence

The management of fortifications should never have been withdrawn from the control of the Governors, of whose prerogatives it formed a most essential part. Nevertheless, the records of the eighteenth century bear witness to a continuous encroachment upon that field. In Nevis in August, 1705, the Assembly, after having had its attention drawn to the disrepair of the forts, moved for the appointment of a joint committee "to make an agreement with the ablest masons of this island" for the conduct of repairs. This body later reported to both Houses that it had engaged seven masons at 7/6 per day to begin work on 3rd September following.[5] Eighteen months later the defences within the neighbouring island of St. Christopher were found to be in need of urgent improvement. The local legislature agreed that a quarter part of all the negroes upon the island be conscripted immediately for a fortnight's work upon them. This labour force was placed under the discretionary control of a joint committee, to be "employed upon the most urgent occasions during that time".[6] Only a little while afterwards, the Antiguan legislature, in turning its attention to questions of defence, agreed that the security of the island demanded the erection of a new platform for the guns at Cripplegate. A joint committee composed of two members from each House was set up at the Assembly's suggestion to agree with a contractor to build it. The appointment of such a body at once took from the Governor and Council any authority which they, of their own right, might have otherwise possessed in the matter. The Assembly members of the committee proved extremely neglectful in their attendance; no contract was made, and the work seemed destined to be indefinitely delayed.

Governor Parke in desperation attempted to order its erection upon his own authority, but could find no contractors willing to undertake it upon such terms. At last—three months after the matter had been first suggested—the Council addressed a further note to the Assembly reminding them of their neglect, and recommending either that the old committee speed up its business or that a fresh body be appointed in its stead.[7] We are not told what course they adopted, nor is it essential to the significance of our story that we should know.

As the eighteenth century advanced fortifications activity began to grow more and more independent of the Governor's control. In Montserrat a committee, drawn from the Council, the Assembly and the Field Officers, was created in 1735 to build a new magazine and repair the existing defences. This body was given complete authority to hire tradesmen, to conscript a certain body of slaves for the heavy work, to press horses and carts into the service, and generally to conduct the whole enterprise. The Act which set on foot the whole of this machinery showed a conspicuous disregard for the constitutional right which the Governor and Council ought to have possessed to control such a scheme. In Nevis at the same time similar methods were in operation. There we find a joint committee established by mutual agreement between the two Houses in 1735 to select a site for a new stockade. This body having reported its choice of Saddle Hill, a further joint committee was set up to borrow a sum of £500 for the purchase and survey of the land. It being intended to employ a band of slaves upon the work, the same committee was empowered to engage overseers, and to superintend the progress of construction.[8] Four years later the President and Council recommended to the Assembly that Saddle Hill be re-fortified. At first the latter refused to agree, but a new House which was convened soon afterwards exhibited a more compliant temper. Upon the motion of this body, a joint committee was appointed to meet with contractors in order to prepare an estimate of the cost which would attach to the undertaking. Its report having been approved, the legislature set up a further committee to conscript a body of negroes and to engage overseers. Soon afterwards a third committee was established "to give proper directions" to the overseers for the conduct of the work. This system of management continued spasmodically upon Saddle Hill for another six years; new committees being set up or old ones revived whenever fresh alterations needed to be made.[9]

A situation which arose in 1742 in connection with the work upon Saddle Hill, well illustrates the degree to which joint committee

management, coupled with the popular control of finance, increased the Assembly's control over the forts. On 25th March of that year the lower House, desiring that work upon the Hill be temporarily suspended, requested Council's concurrence that the "President would be pleased immediately to issue out an order that all work . . . do from henceforth cease". The Board however refused, and attempted to carry on the work alone, in manifest opposition to the House, whose members doubtless withdrew at once from the committee of management. When the people at large came to hear of the dispute they gave their immediate support to the Assembly, by refusing to send any further negroes to the task. The lack of labourers brought the work quickly to a standstill. Moreover, when a few weeks later it became necessary to pay the various accounts which had accrued to the undertaking, the representatives steadfastly refused to consent to the payment of any claim which related to work done after the date upon which they had requested operations to cease.[10]

In St. Christopher for twenty years after the arrival of Governor John Hart (1721), joint committee control of fortifications, though not completely forsaken, became nevertheless seriously curtailed.[11] It appears that the change, due in the first instance to Hart's insistence, was afterwards prolonged by the efficient zeal of William Mathew—formerly Lieutenant General of the group—who began in 1733 his long governorship.[12] Finding local procedure to be so free from the objectionable features prevalent in the neighbouring islands, Mathew strove to keep it so. For some years he succeeded and kept within his own hands the complete management of defensive works. Early in 1740, however, the representatives in passing an *Act for continuing the work of the fortifications*, reverted to joint committee control by dividing the island into two divisions, within each of which they set up a body of commissioners for the superintendence of the defences. To each committee was entrusted the duty of building guard houses, with power to direct where and how these should be erected, to hire workmen, and "to purchase such materials" as it should think necessary. Mathew, though he passed it, viewed the Act with displeasure. When later he discovered that the legislature was persisting in this form of management, he openly protested against it as an invasion of his authority. "His Majesty", he wrote, "had reserved to myself as chief Governor with the advice of Council the fortifying any part of my government, yet nevertheless I have hitherto delegated that power by passing bills that empower the commanding officer on the island in my absence to

execute what his Majesty requires of myself only. This I find has not answered my intentions for the good of the island, but has been much abused . . . Therefore I desire you recommend from me to the Council that for the future all laws made . . . for fortifying the island are to be executed by my own directions only with the advice of his Majesty's Council, or I shall not assent to them."[13]

But despite his protests he was compelled to acquiesce in the system, for the Assembly would provide for the defence upon no other terms. On 25th February, 1742, a further *Fortifications Act* was passed to prolong the existence of the commissioners, who were empowered not only "to direct" the location and manner of building each guard house, but also to manage the whole work of construction "in what manner they think convenient".[14] The Governor was furious, but the exigencies of the moment forced him to consent to it. That he was fully awake to the flagrant irregularity of the whole preceeding is clearly shown from a letter which he addressed to Lieutenant General Fleming, to whom he remarked, "I always was willing to satisfy the Assemblies how monies given by them were disposed of, and have invited several of them to view the works with me, but I never made engineers of them. I have warned you long since 'tis not his Majesty's intentions, nor did I ever hear of a committee of the House of Commons directing the fortifications of the Tower or Portsmouth or any other. You sacrifice the King's authority daily."[15]

Finally, in the island of Antigua the Assembly had begun to encroach upon the Executive so much, that in 1734 a very comprehensive scheme for repairing the fortifications upon Monks' Hill was carried into effect by two committees drawn solely from the lower House.[16] But such a procedure, though significant, was nevertheless distinctly unusual, and later years witnessed a return to the older and more satisfactory system of joint control. An Act passed early in 1740 "for enlarging the fortifications of James Fort and building a new magazine within the same" left the complete direction of the whole work to a joint committee; while in the following year a similar procedure was employed for the erection of some new barracks within the island.[17]

By the mid-century, therefore, the principle of joint control over fortifications had become firmly established in all the islands. Future years served only to consolidate the practice. Early in the second half of the century it became habitual in the three largest islands[18] to make constant provision at the opening of every new session for the appointment of one or more standing joint committees of

fortifications, each of which was made responsible for the efficient maintenance of some specified portion of the local defences. Each was required to examine periodically the needs of the fortifications entrusted to its care, and to report these to the legislature. The latter having agreed to the necessity of making improvements, the committees were generally charged with the duty of effecting them. These bodies, executive as well as advisory in character, were considered to be regularly constitutional. Each came to be regarded as the authority properly responsible for the efficient maintenance of its own "department"—that of fortifications and defence. All requisitions sent in by fort captains for fresh supplies of stores had to pass through its hands. It alone could sanction expenditure upon works subject to its care, the Assemblies refusing to allow payment for charges irregularly incurred without such sanction. The Governor's authority was reduced to a mere power of recommendation and advice, which the committees could accept or reject, as they felt disposed.[19]

The tenacity with which the Assemblies of this late period clung to their privileges in this matter is well illustrated by a situation which arose in Antigua early in 1782. Report having just arrived of the French capture of St. Christopher, the Council and Assembly were speedily convened in order that steps might be taken towards strengthening their own defences. The Assembly, besides suggesting that martial law be proclaimed, recommended that a joint committee be set up "to act with" the President, with full power to make all contracts conducive to the defence of the island. The Council, however, looked with disfavour upon this scheme. They considered that in a time of such stress the House ought to forego its traditional privilege, and adopt a more summary method of procedure. The Councillors hoped that they themselves would be allowed complete discretionary jurisdiction to organise the island as they pleased. They whole-heartedly concurred in the need for martial law, and reminded the Assembly that such a proclamation would suspend the ordinary legislative processes, upon which all members of the lower House would be expected to repair to their posts within the militia. The representatives at once dissented from this view. "The doctrine of an absolute and necessary cessation to all legislative authority at all times during the existence of martial law," they retorted, "this Assembly does not assent to . . . If therefore, your Board continues to think that martial law must divest the legislative bodies of all authority, we do unanimously dissent from the proposal of enforcing it." Since the proclamation of martial law

depended upon the consent of the Assembly,[20] which in turn was made conditional upon the retention of joint committee control, the Council to procure the former was forced to acquiesce in the latter. A body of commissioners comprising four Councillors and seven Assemblymen was established to join with the President in fortifying the island against expected attack. The President with two Councillors and four Assemblymen constituted a quorum sufficient "for carrying any measures into execution". The officer commanding the regulars upon the island was to be consulted in any matter upon which his advice might prove useful, but final judgment lay always with the committee. Only in the event of an actual invasion was the latter to cease its operations, thereby permitting the Governor and Council to assume summary control.[21]

The joint control which prevailed in connection with fortifications was likewise applied to other fields of military endeavour, such as foreign expeditions, conducted at the public expense. As early as 1692 the Antiguan legislature, in planning an expedition against the French in the neighbouring islands, set up a joint committee to take up all the necessary provisions. It is clear that this body was given a certain measure of discretionary freedom in its acts, because it was allowed to issue orders direct upon the Treasurer for the payment of those from whom supplies had been obtained. After Utrecht, no further expeditions of importance were despatched until the outbreak of the Seven Years' War. In 1759, however, and again in 1762, contingents of negroes were sent from the islands to assist in the reduction of the neighbouring French colonies. The records of the forces sent against Martinique in the latter year show clearly the degree to which joint committees assumed control of their enlistment and despatch. Although details varied from island to island, the general procedure was the same. Within each island a committee recruited the slaves compulsorily from the planters, hired the necessary sloops, and sent them forth. The committees acted quite independently of the Lieutenant Governors and Councils. The Act of St. Christopher which governed the conduct of operations within that island was particularly explicit in granting such freedom. The local commissioners were empowered "to pursue all measures . . . for raising the said . . . slaves and sending them away" as they should "think fit". They were to borrow money sufficient to meet their immediate ends, and were "to take all such steps" as they should "think necessary for the better transporting of said slaves to . . . Martinique . . . without using any formality whatsoever".[22]

§ 3. Public Buildings

In the conduct of public works, too, the Assembly came to be allowed a degree of participation fully as great as that allowed it in connection with the fortifications. The late seventeenth century, as we have seen, provided many precedents for joint committee management in many fields of public enterprise. The Assemblies of the succeeding age were not slow to take advantage of these, with the result that the records of the eighteenth century contain numerous instances of committee control of a most varied character. It will suffice if we sample a few of these, in order to show the different fields into which joint control extended itself.

Early in 1708 the Nevis legislature desired to make some alterations to a building which in former days had done duty for a gaol. The House recommended that a joint committee should be appointed "to agree with carpenters and masons to fit out a room of the former prison house". After some demur the Council consented to this plan, which was apparently carried into effect.[23] Some years later the Antiguan Assembly, considering how inconvenient it was that its sittings should be held "in taverns and public houses", moved for the creation of a joint committee "to consider of means and receive proposals" for building a Sessions House. The Council agreed to this, and appointed two of its members to join in the committee.[24] In the absence of further evidence it is impossible to say whether or not this matter was ever proceeded with; but if it was, it is almost certain that the joint committee was entrusted with its management. In the early thirties the Montserrat authorities, anxious for the erection of a church in the parish of St. Anthony, passed an Act to provide for the work. By the terms of this measure the actual construction was left to the management of a small committee chosen from the two Houses.[25]

Assembly participation in the conduct of public works had become quite marked, therefore, even before the outbreak of the financial controversies of the mid-century. But as a result of the popular victories upon that occasion, the influence of the representatives in executive matters within every island grew gradually more and more preponderant. It became essential not only that they be consulted upon all matters requiring expenditure, but also that they be given a share in the actual ordering and management of the works themselves, that they might be able to judge equitably of the accounts which would later come before them for examination. The joint

committee at once offered itself as a convenient device for securing the end desired, and became employed more extensively than ever before. In fact, the variety of circumstances in which joint control came to be practised during the latter half of the century quite defies enumeration—only a few of the more noteworthy being of sufficient interest to merit description.

In 1747 the Antiguan Assembly, desiring to have a new courthouse built in the market place at St. Johns, proposed to the Council that a joint committee be appointed to prepare plans for the new structure. In due course this body returned its report, which met with the approval of both Houses. As a result it was given further instructions to hire labourers, purchase materials, and "contract with undertakers" for the erection of the building.[26]

In St. Christopher only a month or two later, the attention of the legislature was drawn to the need for choosing a new gaol. The Council suggested to the Assembly that a joint committee be set up "to agree for a proper place in the town of Basseterre". This course was adopted, the committee reporting only a week afterwards that a house belonging to a certain Mr John Douglas could be hired at a rental of £50 a year. The Houses having approved this suggestion, empowered their committee "to rent the said house . . . and also to agree with workmen for making iron bars and windows . . . for the greater security of the place".[27] About the same time the representatives began to feel the need for a new meeting place in Basseterre. Accordingly they moved for the appointment of a joint committee to purchase some existing premises which were thought to be suitable for conversion into public buildings. Apparently this expedient proved inadequate, for in 1750 we find the business of a new Sessions House again engaging their attention. Plans were now made for the erection of a totally new building. A joint committee was established to prepare specifications for the approval of both Houses; after which it received directions to superintend the actual work of construction.[28]

Not very long afterwards the Montserrat Assembly had similar need to occupy itself with the question of its public buildings. Here, however, it was the repair of the old ones rather than the erection of the new, that demanded attention. After some discussion the House appointed a committee of four of its own members to join some of the Council, "to inspect all public buildings and contract for all necessaries for the carrying on and repairing such".[29] In due course the necessary repairs were by this means effected. Much the same sort of task presented itself to the Antiguan legislature in 1765, when

it became necessary to erect a new office for the local Registrar of Deeds. The Assembly adopted a scheme, similar in all respects to that already noted in St. Christopher. A joint committee was set up to purchase land, and prepare plans for the new building, and when these had been approved, the same committee was empowered to contract with workmen for its erection.[30]

§4. Water Works

Schemes for the supply of fresh water to the towns, being generally undertaken at the public expense, provided further opportunities for joint control. In 1772 the Nevis authorities, wishing to provide a constant water supply for Charlestown, appointed a joint committee "to inspect into the . . . springs" near by, and to make a report to both Houses upon the practicability of tapping them. This body reported favourably upon the proposal. Thereupon the legislature, having first agreed to purchase the site of the springs, set up a fresh committee to prepare a bill to cover all details, and to carry "into execution" the whole affair. It was further decided "that their agreements and contracts with workmen and others shall be final"—in other words, the terms of such agreements were not to be subject to any Assembly amendment, or even review. This joint committee was continued from session to session, with the result that considerable progress was made in the laying of pipes between the springs and the town. After four years of effort, however, it became evident that the scheme was destined to failure; the works having merely choked up the springs to no purpose. The previous owner of the site petitioned to have his land restored to him, and expressed his willingness to refund the purchase price. The Houses, fully sensible of the futility of further persistence, glady adopted this course, and ordered the island Treasurer to take up all the pipes, in order that they might be put up for public sale.[31] In Montserrat, a similar proposal for supplying the towns of Plymouth and Kinsale with water from Bass's Springs came under discussion at the close of 1774. By common consent a joint committee was set up to report upon the practicability and cost of the scheme. This report proving quite favourable, a joint body was subsequently chosen "to consider proper ways and means for carrying the same into execution". Whether or or not the matter was ever brought to a successful conclusion it now seems impossible to discover; nor is it essential to our story.[32]

§ 5. Conclusion

It is clear, therefore, that by the eighties of the eighteenth century the agency of the joint committee had become almost universally employed in the management of all undertakings which required more than a negligible expenditure of public money.[33] The practice was only moderately efficient, but it was in complete accord with the prevailing political temper, and in harmony with the existing system of administering the finances. It is also clear that the Assembly, by virtue of its financial power, had obtained by the latter half of the century a preponderating influence in the direction of such committees. The Nevis representatives were particularly insistent upon their authority in this respect. "This House"—so runs their claim, "are of opinion that we have power to control the proceedings of all committees, unless they are made conclusive and final by a special joint resolution entered into by both Houses for that purpose."[34] Similarly the representatives of St. Christopher in 1778 refused to a joint committee "full power to make necessary and essential repairs" to the fortifications, on the ground that the grant of such final authority to a mere committee would constitute too great a surrender of their own powers. "This House cannot in duty to their constituents," they asserted, "concur in delegating so material and extensive a power to a committee, as to enable such committee to make necessary and essential repairs without the consideration of this House to the propriety and necessity thereof."[35]

Further indication of the leading place which the Assembly had come to occupy in matters of direct administrative concern is found in the fact that they themselves sometimes took initial cognizance of an existing public need, by setting up a committee of their own to enquire into and report upon it. Having decided, moreover, that a certain work or service really demanded attention, the House itself was nothing loth to make the initial arrangements for carrying it out, even before the Council's consent had been obtained. In the island of Montserrat this popular disregard for the correct executive authority appears quite early. In 1745 the Assembly informed the Council that it had "agreed to allow Michael White Esq. one pound eight shillings per day, to direct the laying out of the trenches, batteries, etc. in [the island] passes", and desired the Board's approval for the act.[36] A year later the same House contracted with a certain John Dyett to build a shed to the guard house at Old Road, upon the understanding that he would be paid for it in accordance with its estimated value when completed. Only when the shed had

been finished did the representatives inform the Council of what they had done, and request the appointment of a joint committee of one from each House "to join two persons nominated by the said Dyett to appraise" the building. The Council raised no objection to this course. The appraisers met, valued the shed, and reported their decision to both Houses, whereupon an order was issued to Dyett in payment of his services. Such informal procedure continued occasionally to be adopted in Montserrat right down to the close of our period.[37]

But that every Council was not prepared to submit to such popular presumption, and had ample power to combat it, is readily illustrated from a situation which arose in St. Christopher in July, 1785. There the Assembly, having recognised an urgent need for repairing the barracks upon Brimstone Hill, had proceeded to set up a committee of its own members to arrange for the performance of the work. This body, acting solely upon its own authority, called upon contractors to submit their estimates for making the repairs. The Councillors learned nothing about the matter, until they happened to spy within the local newspaper the advertisement calling for these figures. In considerable astonishment they despatched an immediate note to the Assembly, pointing out the grave risk which it ran of having its proceedings completely disavowed. We "think it right to remind you", cautioned the Council, "that the concurrence of this Board may possibly and indeed has heretofore been deemed absolutely necessary in passing all accounts incurred in the execution of such works". The threat produced immediate effect. The representatives lamely protested that it had never been their intention to ignore the Council's authority. They had adopted the course they did, only because the Council had not been in session when the decision to carry out repairs had been taken. They had always intended, they said, to obtain the Board's approval upon the first possible occasion. The Councillors, however, were not to be so easily appeased. For over three weeks they refused to have any more dealings with the Assembly in the matter, thereby causing the complete suspension of the work. When at length they did give permission for its continuance, it was only upon condition some of their number were added to the committee of management, thereby constituting it a body of joint control.[38]

Although this tendency on the part of Assemblies to usurp the whole of public works administration is of great significance, we must be careful not to give it undue stress. Such activity was relatively uncommon. It was the exception rather than the rule, and does not mar our general conclusion that it was the joint committee

which had become the real executive instrument in the conduct of all services undertaken at the public expense. Such a committee almost invariably contained more Assemblymen than Councillors, thereby giving the former a preponderant influence over its decisions. It could be set up upon the motion of either House at any time when a work of consequence required it. Moreover, since it was generally given an independent power to draw direct upon the Treasurer for its expenses, it enjoyed full authority over the work entrusted to its care, subject only to such directions as the legislature as a whole agreed to give it.

The attitude of the imperial authorities to this development of joint committee administration was the same with regard to the Leeward Islands as it was to Barbados. The system met with no opposition from the Board of Trade. Acts establishing joint committees, instead of being rejected, were allowed to "lie by". The Board's legal advisers, dreaming perhaps that the committees were always meant to enjoy a jurisdiction subordinate to the Governor and Council, repeatedly failed to raise objections to them.

An Antiguan Act passed early in 1734 provided for the creation of two committees composed entirely of Assemblymen, for work upon Monk's Hill; the first to repair the cisterns, and the second to repair the platforms for the guns. To these committees was entrusted the sole execution of the work, with power to draw direct upon the Treasurer for payment of all their expenses. Yet when this measure, after having reached the Board of Trade, was sent down for the inspection of its legal adviser Francis Fane, he replied that he could find "no objection" to it, with the result that it was allowed to enjoy its full effect.[39] If no objection could be found in so radical a measure, it is hardly likely that subsequent Acts establishing only joint committees would be excepted against. An Act passed some years later "for . . . building a new magazine . . . within James Fort" stipulated that directions for the erection of this building were to be given either by the Governor, Council and Assembly, or by "a committee of the same". Fane reported this too, as free from objection.[40] Later measures of this type also failed to meet with opposition, there being no recorded instance of an Act being disallowed on account of legal opposition to the principle of joint control in public undertakings. From this fact we must infer that the growth of the system was not really opposed to the wishes of the imperial authorities, who were content that the prerogative in approved localities should be gradually relaxed, and the popular elements permitted freer play.

Chapter XI

APPOINTMENT IN BARBADOS AND THE LEEWARD ISLANDS

§ 1. Introduction

The commission granted to every West Indian Governor gave him the right to appoint all officers—civil, judicial, or military—within his province. In practice, however, this theoretical authority was modified in two very important particulars. First, a Governor's right to make local appointments did not prevent his master, the King, from doing the same. The authority which appointed the greater assuredly possessed the power, if it wished, to appoint the lesser also. Secondly, in Barbados and the Leeward Islands there were some officials the special nature of whose duties was held sufficient to give the Assemblies a right to share in their selection. These officers comprised the Assemblies' own clerks and marshals, the island agents, Treasurers, and sometimes—though this was not a uniform rule— some others of the treasury staff. The present chapter deals with these three agencies of appointment. In it we shall attempt to discover the extent to which successive Governors and Councils came to have their appointing power restricted in accordance with the encroachments of the Crown on the one hand and the Assembly on the other.

§ 2. External Appointments to Major Offices

(i) Direct Crown Appointments.

All island authorities deeply resented the manner in which their English superiors interfered in the making of local appointments. It was felt that the gift of places was one of the most powerful weapons a Governor possessed, both for keeping his subordinates duly obedient to himself and for rewarding those who might deserve well of his administration. The arrival of a stranger, therefore, armed with a commission from the Lord Proprietor, the Crown, or some government department, authorising his entry into an office which had previously lain within the Governor's gift, was sufficient to

excite the bitterest passions of the local inhabitants. As often as not some existing official had to be turned out to make room for the newcomer, who, though enjoined by his patent to yield obedience to the Governor's authority, nevertheless enjoyed a position of comparative independence so long as he retained sufficient influence at Whitehall to counter the complaints which the Governor might make against him.

External interference in Barbadian and Leeward Island appointments dated from quite early times. Charles II, whose name is most commonly associated with the beginnings of the patent office system within the colonies, in reality only enlarged and extended a system which had been created for him by his predecessors. He had precedents dating from proprietary times to justify him in his acts. The Second Earl of Carlisle in 1640 had disposed of the office of Secretary of Barbados by commission direct from himself.[1] So too, during the Commonwealth, the posts of Secretary and of Provost Marshal in Barbados had been disposed of by patent from Cromwell. This had provoked bitter though unavailing protests from the planters who throughout the period of the civil wars had become accustomed to choosing all their own officials,[2] and resented the Protector's action as a piece of tyranny. They hoped that with the return of the Stuarts all such interference with their internal offices would cease.

Charles, however, had quite other plans. Early in the first year of his return, he took occasion to grant both the Secretaryship and the Provost Marshalship[3] of Barbados to persons of his own selection. In vain the Barbadians protested the Governor's right to choose these officials; their remonstrances passed unheeded, and from 1672 onwards all governors were forbidden to meddle with any places which had been granted by virtue of patents from the Crown.[4] In 1676 the posts of Naval Officer and Clerk of the Market in Barbados were both erected into patentable places, much to the indignation of Governor Atkins, who complained bitterly against this growing encroachment upon his jurisdiction. Secretary Coventry in reply, stated the imperial attitude in the matter with unmistakable bluntness. The King had legal power to make direct grants of all the island offices if he so desired. "Your Assembly will be very much mistaken," he wrote, "if they think they can erect any office with power to take fees of the King's subjects, and by their power exclude the King from disposing of it."[5] Accordingly the post of Attorney General in Barbados not long afterwards became a Crown appointment, and in the second half of the eighteenth century the Solicitor General's place followed suit.[6]

The same patent office process extended itself also to the Leeward Islands though upon a less extensive scale, for there the majority of administrative offices were of too trifling a value ever to be attractive. Nevertheless in 1677 the King granted the combined offices of Secretary and Provost Marshal in the Leeward Islands to one Captain Garrett Cotter in trust for his kinsman Sir James Cotter, the Deputy Governor of Montserrat. Both Sir William Stapleton and his successor Sir Nathaniel Johnson deeply resented this step, which took from them the chief offices of worth within their gift.[7] For a considerable time after that no further Crown encroachments took place, but in the middle of the eighteenth century the offices of Attorney General and Solicitor General[8] of the Leeward Islands became direct Crown appointments, and so did the Chief Justice's place within each of those islands.[9] These Chief Justiceships, on account of their fees, were of considerable value, and it was probably this circumstance that first induced Chief Justices in the Leeward Islands to crave direct royal confirmation for the posts which they had already received at the Governor's hands. Such confirmation safeguarded them from arbitrary removal and so made their tenure of office more secure. The Crown, nothing loth to increase the scope of its own patronage, readily granted the desired favour. Having once encroached, it was not slow to usurp complete jurisdiction over all such places. For the future, though sometimes it filled them in accordance with a governor's recommendation, it no less frequently took the unrestricted liberty of filling them with whomsoever it pleased.

(ii) Departmental Appointments.

A similar reduction of vice-regal authority accompanied the growth of imperial customs administration within the islands. The commissions granted to the Willoughby brothers empowered them to establish ports and custom-houses and to appoint fit officers to fill these places.[10] The collection of the 4½ per cent. duty in Barbados and the Leeward Islands, from its inception down to the year 1670, was completely entrusted to the management of these brothers, who must therefore have exercised the right of appointment so given them. But for the next fourteen years the duty was let out to farm, by which means the responsibility for its collection ceased to reside in the Governor, and became vested instead within the hands of local collectors appointed by the farmers themselves. Finally at the close of 1684 this system was abandoned, and its collection thenceforward devolved upon the Commissioners of Customs in England, who

appointed local officials of their own.[11] In effect therefore, yet a further portion of the Governor's field of appointment was withdrawn from his control.[12] In much the same way, a Governor's right to appoint the local judges of the Vice-Admiralty Court was withdrawn early in the eighteenth century when it became customary for these to be appointed direct by the Commissioners of the Admiralty in England; and the island Postmasters from the very first were appointed by the English Postmaster-General.

Thus between direct Crown appointment on the one hand, and departmental appointment on the other, the most attractive posts in the island administration came to be withdrawn—often quite early—from the Governor's gift.

§ 3. External Appointment to Minor Posts

Unfortunately, the system of external appointment to island offices was not confined to major posts. These having been absorbed, it only remained for many of the lesser clerkships, marshalships, and registrarships to follow suit. The eighteenth century bore constant witness to this process.

The right of the Crown to take to itself the disposition of these lesser offices did not always proceed unopposed. In 1667 the Barbadian legislature passed an Act[13] giving the Chief Justices of the Common Pleas full power to appoint the clerks and marshals to be employed within their courts. In passing this measure the legislature destroyed the previously existing right of the Secretary and the Provost Marshal to appoint their own deputies to these places, and owing to the turmoil of the times the new procedure passed without serious[14] challenge until the opening years of the eighteenth century. In 1707, however, one George Gordon was appointed Provost Marshal of Barbados. When he arrived to take up his place his notice was drawn to the fact that, prior to 1667, the appointment of the clerks and marshals of the courts had resided in the possessors of his office. He readily saw that by securing the disallowance of the Act of 1667, he could regain this power. His determination to adopt this course was strengthened by the fact that there was a growing tendency within the island to repudiate his authority in other fields. The Judge of the Court of Vice-Admiralty had of recent years assumed to himself a right to reject the Provost's deputy, and appoint a marshal of his own for his court. A law of 1708, which permanently established a committee of public accounts, had similarly ordained

that the committee have power to choose its own marshal. Gordon determined therefore to lay his complaints before the Crown itself, in order to stamp out these growing encroachments upon his authority. He secured the assistance of Alexander Skene, who was Secretary at the time. Together they drew up their bill of complaints, making it appear that it was as much their concern for the authority of letters patent as for their own profit which motivated their protests. Both the Board of Trade and the Privy Council lent them a sympathetic ear. Despite its forty years of operation the Act of 1667 was disallowed, the Governor being instructed to admit the patentees to the full privileges of their offices, as enjoyed by their predecessors, and to take care that no further laws be passed infringing their rights.[15]

While the Provost Marshal was thus airing his wrongs, Secretary Skene was busy prosecuting some complaints upon his own account. The post of private secretary to the Governor had in the seventeenth century lain within the appointment of the island Secretary. This circumstance had caused much dissatisfaction among the governors, James Kendall in particular having complained loudly against the fact that he could not choose his own servant instead of having to put up with whomsoever the Secretary pleased to allow him.[16] Upon Skene's arrival within the island in 1700 the then Governor, Ralph Grey, took matters completely into his own hands by appointing a private secretary of his own, selecting Edmund Bedingfield, Skene's immediate predecessor, for the position. In order to provide him with suitable rewards, Grey ordered that all the clerical work attaching to the Governor's jurisdiction as Ordinary within the island should be transferred from the official Secretary to the private appointee. The Secretary was thereby robbed of the probate and testamentary business which hitherto had been his most profitable source of emolument.

Skene petitioned the Crown for redress. Grey was called upon to explain the authority upon which he had acted. He replied that as he held the office of Ordinary, he surely possessed the right to appoint his own clerk for the transaction of that business. In this attitude he was supported by the local Council who, with more force than truth, asserted that all former governors had enjoyed the power of appointing their own private secretaries. Skene, on the other hand, had the whole weight of past usage to support his claims, and could clearly show not only that his predecessors had appointed deputies to serve as private secretaries, but also that they had freely enjoyed the fruits of all testamentary business. The Board of Trade and the

Privy Council both adopted the view that, whatever the theoretical rights of the Governor's position might be, it was the Secretary and not he who in the past had appointed the private secretary, and so ordained that the Secretary be continued in that privilege. Skene in 1702 was granted a fresh commission which cleared the matter of all uncertainty by including the disputed place within the scope of his office.[17] For a few years he enjoyed the fruits of his victory undisturbed. In 1708, however, a new Governor, Mitford Crowe, reverted to a course similar to that attempted by Grey. He, too, chose his own private secretary, and robbed the principal Secretary of a portion of his duties in order to provide emoluments for the new appointee. Skene was again forced to appeal to the Crown, with the result that Crowe received strict injunctions to restore him the full fruits of his office. The Governor's stubborn refusal to comply with that command undoubtedly contributed to his recall in the following year,[18] after which Skene was left unmolested.

Mitford Crowe also made a last determined stand upon the question of the Naval Officer's appointment, which was a long-standing grievance. By the terms of the Navigation Act of 1663 the appointment of this officer was vested in the Commander-in-Chief. Atkins had been the first to protest when the post was made a patentable one, and Kendall in 1691 had again protested. "The Governors", he had argued, were by the Act "made responsible for the execution of the said offices: 'twere but rightly reasonable [therefore] that they should have the disposal of them to such as they [could] confide in."[19] Finally in 1707 Crowe, acting upon the assumption that the place lay rightfully within his patronage, forced Samuel Cox, the existing patentee, to pay a rent of £300 a year for it. The latter at once appealed to the Board of Trade, which speedily reproved the Governor for his arbitrary dealings and compelled him to restore Cox to the free enjoyment of his office.[20]

In the Leeward Islands this opposition to the system of external appointments to minor positions was not so pronounced, though we do know that the governors viewed its extension with dislike. The only serious challenge ever directed against it however was issued early in the governorship of John Hart (1721-27). Previous to this time the Governors of the Leeward Islands had enjoyed the right of appointing certain of the clerks and registrars within their administration.[21] Hart sought to extend his sphere of appointment by presuming to fill several additional offices which had previously lain within the gift of the island Secretary. Wavel Smith, the existing holder of that office,[22] was the very last person to submit to such

treatment: he at once challenged the Governor's action. In the initial stages it was the Governor who triumphed. He refused to allow the Secretary's deputies to officiate in any of the disputed offices until Smith had accepted vice-regal commissions for them. Doubtless Hart reaped some profit from the grant of these, but his triumph proved very short-lived. Smith hastened to make his petition to the King, before whom he was able to argue that the Governor's willingness to compromise by the issue of commissions was in effect a confession of his bad title to them. Making the very most of his opportunities he laid claim to a wide margin of offices, even including some which had hitherto lain within the Governor's disposition. The Board of Trade found in the Secretary's favour and recommended that he be "continued in possession of the offices" he claimed.[23]

The success of external appointees in all such controversies was almost wearisome in its uniformity. It was useless for a Governor to struggle against Crown appointments. By the mid-century a wide variety of posts had come to be filled by Crown appointment; indeed almost every office of substance had become filled in this way.

§ 4. Assembly Encroachments

The encroachments made upon the Governor's authority from the direction of the Assembly were by no means so uniformly successful. The Crown, as supreme Executive, did possess a legitimate right to appoint to island offices. The Assembly on the other hand, as a subordinate legislature, had no right at all to enter into the executive sphere. The Governors generally realised this; though sometimes only imperfectly. Consequently we find that the struggles between them and their Assemblies over matters of appointment were both frequent and bitter. The Governors had legal right upon their side, but the Assemblies very often possessed a compelling influence which was more than sufficient to gain their ends.

(i) The Assemblies' Servants.

It is only to be expected that one of the first ways in which island Assemblies departed from English precedent was in the appointment of their own servants. From earliest times of which record now exists, we find that their clerks and marshals—where there were any—were appointed solely by the private election of the members. The right of the Barbadian House to elect its own Clerk and Marshal was

at no time ever challenged, with the result that it continued unabated throughout the whole period of our review.[24] In the Leeward Islands, on the other hand, this right of popular selection lasted only until the governorship of John Hart (1721-27) who compelled the Houses to revert to something like the English custom in the matter, whereby such appointments were left to the Crown. Although the Assemblies at his behest gave up their privilege, they must have done so only with the greatest reluctance, for on two earlier occasions the same subject had given rise to most bitter conflict.

Early in 1710, when Governor Parke had called a session of the General Legislature to meet in the island of St. Christopher, the representatives refused to proceed to business unless they were allowed to appoint their own clerk. They insisted that the choice of their own servants had "been the constant practice, use, and custom of General and several Assemblies from the first settlement of these islands".[25] Parke's rigid insistence upon his legal right to the appointment led to a complete deadlock, and later to the actual dissolution of the House before an atom of business had been transacted. Then, too, it was the same Governor's insistence upon a similar right in connection with the Antiguan Assembly that provoked the quarrel which led ultimately to his death.[26] It is clear that Parke's immediate successors, instead of reviving the dispute, adopted the line of least resistance by acquiescing quietly in the Assembly's claim.[27]

Hart, however, returned to the charge, though not so bluntly as Parke had done. Whereas the latter had insisted on a right to appoint whomsoever he pleased, Hart was willing to concede the Assemblies an informal power of recommendation. Early in 1722, for instance, a new Assembly which met in Nevis, proceeded at its first meeting to select a clerk. Having chosen one Solomon Israel for the post, it asked Hart to admit him to be sworn. The Governor refused on the grounds that such a procedure would constitute an infringement of the prerogative. The representatives in vain protested the ancientness of their right to free appointment. Hart proved adamant. The power of commissioning the Assembly's clerk belonged to him. He was willing to compromise to the extent of allowing them to recommend the person whom they would prefer to be employed, but no further would he budge. They could take it or leave it. The House thereupon bowed to his will and "*recommended* . . . Mr Israel, of whom his Excellency approved, and admitted him to be sworn accordingly".[28] The Antiguans were similarly persuaded to adopt this procedure, the House being permitted

merely to recommend its own clerk and messenger, both of whom were thereupon approved by the Governor and granted their commissions.[29] Before long the same practice was extended to other islands.

But having thus vindicated their right, the Governors were not always careful to use it so tenderly. Although they maintained the general rule of allowing the representatives to recommend, they did not always confirm the first person the latter put forward. In 1742, for instance, the Antiguan House recommended a young man, John Gallway, for their messenger. Governor Mathew rejected him, asking the Assembly to make choice of another. Mathew stated that he considered the post more suitable for an elderly, partially disabled man, and that it would be an act of charity to grant it to such a person. The House thereupon acceded to his wish by recommending a man of whom he could readily approve.[30] A few years later Mathew went even further: in 1748 he appointed Peter Tyson to be Clerk to the Assembly of St. Christopher almost in direct opposition to the wishes of that body which was perfectly well satisfied with the existing Clerk, Craister Greathead. Nevertheless Tyson was admitted to the office.[31]

By 1783, however, the Assemblies were all again tending to disregard the Governor's authority. Once more they are found claiming the essential choice of all their sevants, leaving to the Governor a mere formal right of confirmation. In part the Governors had themselves to blame for this, for they had of late become far too prone to disregard the Assembly's rights of recommendation. In 1780, for instance, Governor Burt, having had reason to complain of the slovenliness of Aretas Akers, the existing clerk of the St. Christopher Assembly, decided straightway to dismiss him, and issued a fresh commission to one George Berkeley for the place. The representatives were deeply incensed at this repudiation of what they had grown to regard as their rightful privilege of initial recommendation. Being, moreover, quite satisfied with Akers they refused to admit Berkeley to the office. The Governor vigorously asserted his discretionary right to appoint whomsoever he pleased, but the House remained undeterred. Soon afterwards Burt died, leaving the administration in the hands of Anthony Johnson, President of St. Christopher. The latter took no steps to enforce Berkeley's admission. Instead, Akers continued in office until March, 1781, when he resigned purely of his own accord. The representatives thereupon chose James Ward to succeed him. Only then did they signify their choice to the Commander-in-Chief in Council for his confirmation,

with a request that he admit Ward to take his oaths of office before that Board.[32] It is significant that there is no mention of any commission in connection with Ward's appointment. It would appear that the Assemblies were fast succeeding in their efforts, and that the need for the vice-regal commission was becoming a thing of the past. Already in 1775 the Montserrat Assembly, smaller, more isolated, and less well known than its neighbours, had successfully presumed to choose a fresh clerk without securing the Governor's confirmation of him.[33] So, too, in Antigua, by the eighties the commission seems to have become unnecessary. Burt's successor, Thomas Shirley, seems in this respect to have been most neglectful of his rights. During his governorship it was deemed sufficient that an Assembly's nominations be merely approved by him, after which its Clerk and Messenger (sometimes known by this time as Sergeant-at-Arms) were permitted to take their oaths and commence their duties without any further formality.[34]

(ii) Island agents.

In the appointment of agents to manage the affairs of the colonists in England, it is only to be expected that the Assemblies should have desired some influence, and it is clear that the Councils never denied their right to this. Disputes which arose upon this matter related only to the proportionate influence which each House should enjoy. From the earliest years when agents had first been chosen the representatives had been given a prominent share in their selection. In Barbados the first agent ever appointed was chosen (1671) solely by the Assembly, which, though it did not insist upon this exclusive privilege in future years, came nevertheless to exercise an almost invariable right to nominate the agents, whom the Governor and Council were expected passively to confirm. The latter, however, were not long content to play so mechanical a part and strove hard for a right themselves to nominate, and to reject, if necessary, the Assembly's nomination. This struggle which commenced in 1694 continued intermittently until 1709, when the Crown at the instigation of the Board of Trade, interfered upon the Council's behalf. In disallowing an unfavourable *Agency Act* passed early in that year, the Queen stipulated that for the future the appointment of agents should always be "by the joint consent of the Governor, Council and Assembly"—in other words—that the Council should enjoy a power of nomination or rejection just as freely as did the Assembly itself.[35]

For some years the matter remained on that footing, the agents being appointed by successive Acts in the passing of which the concurrence of three branches of the legislature was necessary. In the troublous decade 1723-1732, however, the whole controversy was revived, the lower House claiming the exclusive right of selection. But in the latter year they receded from their demands, thereby allowing a return to joint appointment by legislative Act, which system prevailed unbroken for the remainder of our period. It should be noted, however, that these Acts always originated in the Assembly, so that, with the passage of years, the right of that House to nominate the agent became a virtual reality. The representatives thus gained by the force of usage what they had failed to secure by more direct means.

In the Leeward Islands the Assemblies were less aggressive, and were content to allow the Councils an equal right both to nominate and to reject. Never at any time did an Assembly attempt to exclude its local Lieutenant Governor and Council from participation in the agent's selection. In 1733 one Richard Coope was nominated by the Council of St. Christopher for appointment to that position. The bill appointing him was read first in the Council before being sent down for the approval of the lower House, which upon this occasion confirmed the choice.[36] Indeed the selection of agents in each of the Leeward Islands was generally a matter for arrangement between the branches of its legislature. It generally took the form of a legislative Act over which each House possessed the right of amendment or rejection. Numerous instances are on record where the Houses, in disagreeing over the choice, allowed the appointment to fall to the ground.[37] In the absence of clear-cut proof we cannot assert that the Leeward Assemblies possessed the sole right of selection, but it is clear that during the latter half of the eighteenth century the nomination as a general rule did rest entirely with them, the names being submitted only afterwards for the Council's approval.

The appointment of the Antiguan agent was conducted along lines sufficiently different from the rest to call for special notice. In that island a permanent Act was passed in 1698 to regulate the manner of his selection. This measure ordained that "the Commander-in-Chief, Governor, or President for the time being [should] once every year . . . nominate some fit person by and with the consent of the Council and Assembly of this island to be their agent".[38] For over seventy years the real intent of this Act was evaded, the Assembly and Council themselves continuing to nominate

the agents, whose names were then submitted to the Governor for his confirmation. Thus the intended procedure was in effect completely reversed. At the close of 1772, however, Governor Ralph Payne compelled the islanders to return to the correct practice. He insisted upon his right to make the initial recommendation and limited the Council and Assembly to their right only to approve.[39] But with his removal from the government, the planters reverted to their previous custom. While not denying to each new governor his right of nomination, they completely stultified such a privilege by presuming themselves to recommend to him the persons whose appointment they desired. Thus in 1782 the Assembly addressed the Council in the following terms. "We think . . . that the agency appointment should be at this time filled up, and as Alexander Willock and John Burton Esqrs. both now residing in . . . London, are very desirous of undertaking the public service jointly, we . . . wish to recommend them to the favour and good opinion of his Excellency . . . and of your Board, praying that his Excellency in pursuance of an Act passed in . . . 1698 . . . would please to nominate these gentlemen as joint agents of this island; and that your Board in consequence of such nomination would grant your assent, to which the concurrence of this House will readily be added." The Council being quite favourable to the appointment, Governor Shirley acceded to their combined request, by nominating Willock and Burton to the vacant office.[40] This was speedily drawn into a precedent, thereby giving to the Antiguan House the substantial privilege already possessed by the neighbouring Assemblies, of being able freely to nominate the person whose appointment was desired.

(iii) TREASURERS.

When we come to the appointment of local treasurers we enter upon more debatable ground. The claim of the Assembly to participate—though quite understandable—was nevertheless not so excusable. The right to select this officer lay quite legally within the power of the Governor and Council, as the regularly constituted Executive within each island. These generally realised that the appointment was a matter of vital importance to themselves, for the authority which appointed the Treasurer assuredly kept within its grasp a very powerful lever over the conduct of the public finances. It is not to be wondered at, therefore, that disputes on this head were by all parties considered of the very utmost importance, and generall provoked extreme bitterness. In all islands during the early years each local Treasurer was chosen by the joint concurrence of all

branches of the legislature. There is no evidence that he was ever appointed during the seventeenth century by the Governor's commission.[41]

In Barbados as early as the Commonwealth, we have definite record that the Treasurer was chosen by joint agreement between "the Governor, Council and Assembly".[42] It may be that during the period of Francis Lord Willoughby's second governorship (1663-66) this practice was abandoned, but, if it were, it was certainly restored by his immediate successors. We have clear proof that by the year 1670 the selection was again made by agreement between the Governor, Council and Assembly, and was finalised by the inclusion of the appointee's name within the clauses of the *Liquor Excise Act*.[43] The lower House enjoyed the right to nominate him, and to submit his name to the Governor and Council for their approval.[44] This procedure was followed year after year, until the House, by amassing a weight of precedent in its favour, assumed to itself the sole right of nomination, while the Governor and Council by constant confirmation tended to destroy their right to reject.

A preliminary clash in the matter occurred at the close of 1690, when the Assembly in preparing for a new Excise Bill, resolved to displace the existing Treasurer and to nominate a successor in his stead. The displaced official, happening to belong to the Council, naturally gained the support of his colleagues in protest: they were angry that the House should have presumed upon so drastic a course without consulting their wishes in the matter. They declared that they had always previously been consulted in the selection of the Treasurer, and desired that they might continue so for the future. The representatives, on the other hand, retorted that his nomination had always been their exclusive privilege, and denied that the Council had any right to interfere. Governor Kendall, fully sympathising with the Board, prorogued the House for three weeks, in an effort to make it relinquish its claims. In this, however, he was unsuccessful. The House instead forced him to capitulate, and continued for a further twenty years to put forward the initial nomination, which the Governor and Council continued automatically to confirm.[45]

But early in 1710 the whole question was revived. The Council for reasons of its own opposed the appointment of a certain Richard Downes whom the Assembly had recommended. This time the matter was fought to a finish. Taxation was completely suspended, the representatives refusing to raise a penny until they were allowed the selection of their own Treasurer. The dispute was speedily

referred to the Board of Trade, who in turn consulted both the Attorney and the Solicitor-General upon it. The strong body of precedent in favour of the Assembly's demand, together with the grave dangers to which the semi-bankrupt island was subjected at so critical a time, induced the Board to recommend an acquiescence in the popular claims. By an Order-in-Council of 26th September, 1710, the right of the Council to reject the Assembly's nominee was abolished, and thenceforth the selection of the Treasurer lay completely with the lower House.[46]

In the Leeward Islands during the early period when each Assembly was accustomed to meet along with the Council, the selection of tax collectors and treasurers was always a matter for their joint agreement.[47] When at different intervals during the last thirty years of the seventeenth century, the Assemblies began to hold their sittings apart from the Councils, the same joint system was continued, the initial recommendation coming to reside customarily in the popular House.[48] This continued the general rule until the governorship of Walter Hamilton, who took up office early in 1716. Recognising the manner in which island practice differed from English usage, this man took immediate steps to recover what he concluded to be his rightful jurisdiction. The sessional records of the period are scanty of detail, and do not adequately indicate with what feelings the planters viewed his demands, but it is clear that the Assemblies proved far less aggressive than their Barbadian counterpart had done, with the result that Hamilton was finally able to impose his will upon them. His success doubtless owed much to the tact which he exercised in pressing his purpose, especially his willingness to continue in office all their existing officials, whose positions he regularised by the issue of commissions from himself.[49]

But it was the thin end of the wedge. Once having vindicated their right, the Governors were not slow to make full use of it. John Hart, who succeeded Hamilton, was just the stamp of man to insist upon his full prerogatives, and preserve all that his predecessor had gained. Upon discovering that the existing Treasurer of St. Christopher had been dilatory in accounting for his receipts, Hart summarily dismissed him and, after brief consultation with the Council, appointed a successor.[50] The same Governor, having received advice that the existing Antiguan Treasurer wished to resign, straightway conferred with the local Council over the selection of a new one. In vain did the Assembly seek to revive its right of initial recommendation. Hart flatly refused to part with his rights, and the House was forced to capitulate.[51] From that time onwards the appointment of the

Treasurer within all the Leeward Islands remained in undisputed possession of the Governor-in-Chief, who with the consent of the relevant Council, disposed of the office by commission under his own hand and seal.

(iv) Excise Officers.

Besides the appointment of the Treasurers, the Assemblies sometimes concerned themselves in the selection of any other officials whose duties had to do with the collection of taxes, In every one of the islands import duties were levied for revenue purposes upon all incoming wines and strong liquors, while all vessels were compelled in addition to pay certain tolls of gunpowder for use in the local fortifications. In all islands save Antigua the collection of the liquor duties was entrusted to the local Treasurers, and even there the exception—as we shall see later—was more formal than real. The gunpowder, on the other hand, was everywhere collected by an officer specially appointed for the purpose, who was in addition generally made custodian of the local military stores and arms.

In Barbados, although the collection of the liquor impost devolved upon the Treasurer, there was always a subordinate Comptroller employed to assist him. The selection of the latter caused some dispute in 1675, when the Assembly presumed for the first time to nominate him in just the same way as it did the Treasurer. The Council, desiring to secure the appointment of one of their own number, John Hallett, to the post, demanded that the House waive its nomination. This the representatives refused to do. The continuance of the quarrel threatened to imperil the financial well-being of the colony; should no fresh Act speedily be passed the old measure would expire and the tax fall to the ground. To prevent this the Assembly consented to the passage of a temporary measure by which the existing duties were continued for a further three months. At the end of this time they again came forward with a nomination for the Comptroller's office. Astute politicians that they were, they now sought to recommend none other than John Hallett, the very man for whom the Council had so lately been contending. It appears almost certain the the ruse was successful and that the Board, intent more upon the victory of the person than of the principle, acquiesced in the choice. In the absence of definite proof we cannot be certain of this point, but it is quite clear that by 1677 the House had freely won the right of nomination—which points to the probability of its victory two years earlier.[52] After the successful repudiation in 1710 of the Council's right to reject the Assembly's nomination for the

Treasurership, it became equally unconstitutional for it to reject their nominee for the Comptroller's office. The House therefore retained its privilege throughout the whole of the ensuing century.

In Antigua by the terms of a permanent *Liquor Excise Act* passed in 1697 the collector of the duty was to be "chosen and appointed by the Governor-in-Chief . . . or Deputy-Governor . . . and the Council and Assembly".[53] The position was, however, generally attached to the Treasurership, so that in nominating a person for the one, the Assembly in effect filled the other. When in the eighteenth century they lost the power of sharing in the Treasurer's appointment, it became necessary either to separate the two offices, or else for the House to grant the collector's office to the same person whom the Governor chose for Treasurer. The latter course was the one generally adopted. Each Governor, after choosing the Treasurer, submitted his name to the Council and Assembly in order that they might, if they saw fit, annex the collectorship to the major office.[54]

(v) Powder Officers.

The powder officers, whose duties included the custody of the island military stores, were variously appointed. Neither in St. Christopher nor in Nevis does it appear that the Assembly ever seriously encroached upon the Governor's right to fill this office with a person of his own choosing. In Barbados and Montserrat, on the other hand, local laws[55] passed early in their history not only allowed the Assemblies to share in the selection, but gave them the sole right of nominating candidates annually for the position. The Governors and Councils of these two islands were left the bare privilege of approving the Assembly's choice, In the remaining island of Antigua the method of selecting the powder officer suffered a change almost parallel with that of the Treasurer himself. At the close of the seventeenth century he was chosen by arrangement between the Governor, the Council, and the Assembly, the last named quite frequently, though not invariably, exercising the right of initial recommendation.[56] The Powder Acts of the period also lent legislative sanction to the custom. In 1718 the Antiguan legislature sent to Governor Hamilton a bill which aimed at a continuation of this practice. The Governor, while recognising that the measure impaired the prerogative, nevertheless gave it his assent, pending an appeal to the Board of Trade for a ruling upon its validity. In writing to the last named he pointed out the ancientness of the existing custom and craved advice.[57] It does not appear, however,

that the Board ever returned an answer, and the Governor was forced to take the decision into his own hands. This he did by refusing to permit any further infringement of his rightful powers,[58] and thenceforward the House lost all share in the collector's appointment.

(vi) Lesser Posts.

In addition to the officers already described, the Assemblies at different times won a share in the appointment of many lesser officials. They were motivated sometimes by the fact that a post was of such public importance, it was desirable they should exercise some check upon the persons appointed; and sometimes by the fact that the salary of the official was a direct charge upon the public funds. By an Act of 1736 the Barbadian legislature ordained that the Assembly should annually nominate for the approval of the Governor and Council a gauger of casks for each of the main ports of the island. Two years later similar provision was made for the appointment of an Inspector of Health.[59] So, too, in 1774, the same legislature having decided that the appointment of an Inspector of Weights and Measures would be desirable, passed a law whereby the Assembly were allowed to nominate candidates for this post also.[60] Finally in 1779, in appointing a Harbour Master for the port at Bridgetown, the Barbadians actually named the official in the Act which created his appointment, thereby giving to the lower House the virtual right of nomination.[61].

The Antiguans in 1698 passed a law which allowed the Assembly a share in choosing the local Registrar of Deeds.[62] Only four years later the same people, in providing for the establishment of commissioners of the public ponds, ordained that the Governor-in-Chief or in his absence the Lieutenant Governor "with the advice and consent of the Council and Assembly" should appoint "five knowing men as commissioners . . . for the precinct of Falmouth, and the like number . . . for the precinct of St. Johns". These men were entrusted with a general supervision of the ponds, with power to summon small negro levies to clean and repair them whenever necessary. In actual practice the literal intent of the Act from the very first was completely ignored, the commissioners gradually coming to be nominated in part by the Assembly from their own members, and in part by the Council from among theirs.[63]

In St. Christopher in June, 1727, a law was passed for the establishment of a Registry of deeds and conveyances. The Act stipulated that the Registrar was to be appointed by the Governor-in-Chief,

with the consent of the Council and Assembly. But its literal intention was not always strictly followed, for sometimes in the event of a vacancy, the Governor, who did not reside in the island, felt at a loss whom to appoint and was glad to avail himself of the legislature's recommendation. This was in grave danger of being drawn into a precedent until Governor Mathew asserted his right to retain control of the nomination, and merely to submit it to the local Council and Assembly for their approval. After his death, however, his successors, less careful of their rights, allowed the Houses once more to usurp the right of nomination. Sometimes it was the Assembly which put forward the initial recommendation and sometimes it was the Council. The other House having concurred in it, the name of the selected candidate was sent on to the Governor for his confirmation and formal appointment. Onwards from the middle of the century this became in fact the customary method of filling the office."

But the decisive personal gains made by Governors Hamilton and Hart in the domain of local appointment brought to a standstill the tradition of popular appointment which had been so prominent a feature in the public life of the Leeward Islands before their time. Where early Acts such as the above had already given permanent sanction to the joint appointment of certain officials, the Assemblies naturally let them continue, but as a general rule they made no fresh attempts to encroach upon the rightful authority of their Governors. It is in this that the difference between the Leeward Assemblies and that of Barbados is most clearly marked. The latter, as has been shown, continued actively throughout the eighteenth century to press upon the executive field of appointment, but not so its neighbours in the lesser islands. Occasionally, of course, a Leeward Assembly might assume again the forbidden power, as did the Montserrat House in 1740, when, with the Council's approval, it appointed Charles Pilson to take charge of the small arms belonging to the public. This position was worth but a trifling wage, and the Assembly ever afterwards assumed the sole right to dispose of it to whomsoever they deemed capable of undertaking it.[65] Such minor instances cannot, however, be regarded as serious exceptions to the general Leeward Island rule.

§ 5. The Position in 1783

From what has been described, we can readily see what complication of authority had grown up in Barbados and the Leeward

Islands by the close of the eighteenth century. The Crown, the Governor and Council, and the Assembly all aspired to some share of appointing power. The diversity of appointment which resulted from this was perplexing in the extreme. By 1780 there were in each island three main groups of officials—a civil service, a legal and judicial establishment, and a military department.

The civil service itself comprised three divisions. The first consisted of officials concerned with the collection of imperial revenue. Some of these, like the Naval Officer or the Receiver-General of the Casual Revenue, were patent officers. Others, comprising a small army of searchers, waiters, and collectors, were employed direct by the Commissioners of Customs in England, and worked under the supervision of a Surveyor-General of Customs chosen by the same authority. Still others, like the local Postmasters, were servants of the English Postmaster-General. The second was made up of the officials belonging to the local treasury—the Treasurer, the Powder Officer, and their assistants—who busied themselves with the collection of all taxes and dues levied for local purposes. In Barbados, as we have seen, most of these were chosen exclusively by the lower House; whereas in the Leeward group by far the greater number were still appointed by the Governor in conjunction with each Council. The third section was of a very miscellaneous sort, consisting of the numerous clerks, registrars, inspectors, and marshals engaged in the general public service. Some of these, being patent officers or their deputies, took fees as their sole reward; while others, found chiefly in Barbados, enjoyed regular salaries from the local treasury. These latter included the Inspector of Weights and Measures, the Inspector of Health, and the Harbour Master, all of whom were chosen almost exclusively by the popular House.

The judicial and legal establishment included the judges of the various courts, the Attorney and Solicitor-Generals, and the medley of clerks, marshals, registrars, and examiners who were employed within the courts. In each island there were courts of General and Petty Sessions for the trial of criminal causes, as well as Courts of King's Bench and Common Pleas for the determination of civil actions. The former were presided over by the local Chief Justices and J.P.s, while suits in the latter were heard before a Chief Judge and a body of assistants. Moreover in Barbados, Antigua, and St. Christopher, there were Courts of Vice-Admiralty for the hearing of maritime causes; while in Barbados there was in addition a specially constituted Court of Exchequer, with its Chief Baron and its Puisne Barons.[66]

We have seen how the appointment of all judges and J.P.s in Barbados (except the Vice-Admiralty judges) remained still within the competence of the Governor and Council; whereas the Leeward Islands Governor and his Councils could make final appointments of only the lesser judges and J.P.s, the Chief Justiceships there being within the gift of the Crown. The Attorney and Solicitor-Generals in both governments were likewise chosen by the Crown, and all Vice-Admiralty judges were appointed from England also; while of the battery of clerks, marshals and others, most were either patent officers or their deputies.[67]

In the military sphere, however, the Governor's freedom of appointment remained intact throughout the full period of our review. The Assemblies never seem to have attempted so gross an infringement of the prerogative as to have drawn to themselves a power of appointing to military places. In their Militia Acts they often set formal restrictions to the Governor's discretion—as for instance, setting minimum property qualifications to be possessed by every aspirant to commissioned rank, or specifying the times and places of exercise—but further than that they never presumed to go. The Governor's right to select his own officers for all commands within each local militia remained unthreatened from any source.

The military establishment generally consisted of several companies of foot-soldiers and one or more troops of Horse. Posts of command within these, though numerous enough, were not only valueless, but even burdensome to all who held them. Consequently they excited neither the greed of place hunters nor the jealousy of the local Assemblies, who regulated the whole militia establishment by law, and many of whose members, being prominent planters, held military commands of the highest authority.

To sum up, it is impossible to gauge with mathematical precision the losses suffered by the vice-regal authority between the years 1660 and 1783, but it is possible to draw certain broad conclusions about them. The system of patent appointment robbed all Governors of the chief places within their gift. The Assembly of Barbados took from the local commander practically all the posts dependent upon the local treasury for their reward. Only in the Leeward Islands was the Governor's appointive authority left comparatively free from popular encroachment; and there, as if to balance the account, the Crown had taken to itself an unusual share of patronage relating to the higher judicial offices. In forming any estimate of the constitutional position of a Caribbean Governor at the close of the eighteenth century, each of these circumstances must be taken into account.

Chapter XII

APPOINTMENT IN JAMAICA

§ 1. Introduction

The story of Jamaican appointments follows much the same lines as that of the sister islands. The royal commission to every Jamaican governor gave him the right to appoint all officers, civil, judicial, and military; but in practice this authority was invaded from the same three quarters as it was elsewhere. Firstly, the King by letters patent under the great seal took to himself the appointment of all the more lucrative posts; secondly, two or three English administrative departments made appointments to a small number of island positions, and thirdly, the Assembly in certain cases encroached upon the field, though not to quite the same extent as the Barbadian Assembly managed to do.

§ 2. External Appointment by Letters Patent

It must be remembered that Jamaica at the time of the Stuart Restoration was a new colony, unprotected by existing usages, virtually empty, and lying wide open to exploitation. No wonder, therefore, that office seekers, disappointed perhaps in securing preferment in England, sought Jamaican offices as acceptable substitutes. The few really profitable posts soon went. As early as January, 1661, the important office of island Secretary was granted by letters patent to Richard Povey for life, and the equally important Provost Marshalship to [Sir] Thomas Lynch for life. Next month John Mann was similarly made Surveyor-General of all lands in Jamaica for life.[1]

There was then a lull for a few years because none of the other offices was worth the trouble and expense of soliciting a royal grant, but as soon as these began to become even moderately profitable, the tendency to seek royal appointment reappears, and several more places, previously in the Governor's gift, were usurped by letters

patent. In 1672 the Chief Clerkship of the Supreme Court became a patentable place, being followed in rapid succession by the office of the Registrar of the Court of Chancery (plus Clerk of the Patents), the Clerkship of the Court of Common Pleas at Port Royal, and the office of the Clerk of the Crown and the Peace.[2] The Receiver-General's place, previously in the Governor's gift, was filled by letters patent for the first time in 1674 and remained a patent office ever afterwards. Similarly the Auditor-General's place became permanently patentable in 1680, the Naval Officer's in 1681, and the Attorney-Generalship about 1693.[3] Well might Sir Thomas Lynch remark, even as early as 1683, that "the very meanest office in this island is patented—and for lives, too—in England".[4]

The governors resented the patent office system as an encroachment on their rights and a diminution of their authority, for the patentees, behave as they might, were well-nigh irremovable, their appointments being on practically the same plane as the Governor's own. Moreover, since the Secretary, in addition to being Clerk of the Council and of the whole administration was also *ex officio* secretary to the Governor, it was almost impossible for a governor to employ a private secretary unless he was willing to pay him out of his own pocket or resort to some subterfuge for his emolument, the Secretary naturally being unwilling to surrender to the newcomer any of the prerogatives or profits of his office. Despite this, the Duke of Albemarle, during his short but high-handed administration (1687-88) insisted "on account of his great dignity" on having no fewer than three clerks of the Council, the deputy Secretary and two others of his own choosing. Undoubtedly he would have met with opposition from the patentee in England if he had not died so soon. His successor, President Watson, lost no time in dismissing the two extras[5] and so restored the deputy Secretary to his full rights. Not long afterwards Lord Inchiquin (1690-92) also employed a private secretary for whose remuneration he assigned all that profitable part of the Secretary's duties that related to wills and probates. The deputy Secretary, Edward Broughton, at once appealed both to his principal and the English authorities; but history repeated itself, Inchiquin died! and the private secretary resigned of his own accord. It was well that he did, for within two months a royal order arrived directing that Broughton be restored to his full privileges.[6] It was a considerable time before governors found a way out of the difficulty, and then it was only by a ruse. With the connivance of the Council they set up an office known as the "Messenger for the Carriage of the Public Despatches" with a salary of £500 per

annum payable from the public treasury; which office was customarily bestowed upon the Governor's private secretary, so providing him with suitable emolument.[7] Perhaps it was the success of this ruse that emboldened the Council in 1757, dissatisfied as it was with the services of the deputy Secretary, to try the experiment of choosing a clerk of its own. But the deputy at once appealed to England, and the Council was instructed to restore him to his customary duties without delay. Thus we see how the patent office system irked not only the Governor but the Council as well.[8]

The people, for their part, hated the system for the corruption and inefficiency that it bred. Since the offices were almost invariably exercisable by deputy, the patentees of all but the smallest generally resided in England and either farmed or rented the places to deputies.[9] Occasionally even the deputy remained in England and acted on the spot through a deputy deputy! No wonder that Lieutenant Governor Beeston in 1697 felt "bound in duty" to complain to the Board of Trade how great a prejudice it was to the island "that the patentees who have all the great offices live in England and send over anyone to officiate who are strangers to the place, to the people, and the offices they come to manage, and when they fail to pay their rents or chance to die, other strangers are put in their room, by which means the Treasury and the Secretary's Office of Records, and all others are illy and unduly managed, and men's interests are thereby in danger and their estates precarious".[10] The Jamaican Agents also complained loudly in the same strain.

The Board of Trade, only freshly established and zealous in the performance of its duties, lent a sympathetic ear and early in 1699 prevailed on the Privy Council to order that all patent officers be obliged "by their patents or otherwise" to reside in their various territories "and execute their respective offices in their own persons unless in case of sickness or other incapacity".[11] The Jamaican Legislature, in ignorance of what was pending at Whitehall, itself passed an Act "to oblige patentees of offices to reside in this island", but the English authorities disallowed it on the grounds that it was an infringement of the prerogative and, in any case, merely sought to do what the Order-in-Council had already done. Unfortunately, the Order-in-Council proved completely ineffective, partly because of an uncertainty as to whether it applied to existing, or only to future patents. The whole weight of patentee influence was ranged against it, with the result that the obscurity was never properly cleared up and it was allowed rapidly to become a dead letter,[12] much to colonial disgust. Even Jamaican attempts to prevent pluralism by

forbidding any one person to hold "two or more offices of profit" failed to escape disallowance in England, where the patentee interest proved ever unconquerable.[13]

§ 3. External Appointment by Government Departments

Patentable places were not the only Jamaican positions outside the Governor's gift. There was, in addition, a handful of posts within the disposal of English government departments. Most important of these were the several Jamaican offices of the imperial customs, such as those of the local comptroller and collector who were both appointed by the English Commissioners of Customs.[14] Then there was the local Postmaster appointed by the English Postmaster-General.[15] Finally there came the Judge, the Advocate-General, and the Registrar of the Court of Vice-Admiralty which had jurisdiction over all prizes brought into Jamaican waters by naval ships or other vessels in times of war. In the seventeenth century these officials were all appointed by the Governor in his capacity of Vice-Admiral, but early in the eighteenth century they became commissioned direct from the High Court of Admiralty itself.[16] In times of peace the Court had not much to do and the places were worth little, but in times of war the fees for the condemnation of prizes amounted to quite large sums.

§ 4. Encroachments by the Assembly

In the field of appointment the Jamaican House did not succeed in encroaching anything like as much as the Barbadian Assembly did, but it did establish its right to choose its own servants, and to have the lion's share in the selection and management of the island Agent.

(i) The Assembly Servants.

From earliest times the Assembly had employed a Messenger (or Marshal) and a Clerk. Its right to appoint the former was at no time ever challenged, but its right to choose the Clerk was challenged in Lord Carlisle's day. Carlisle, in conflict with the representatives in 1679 over their claim to summon the Receiver-General before them to account, sought information from the Clerk as to what was going on in the House, only to be met with a blank refusal, "they presuming it to be their privilege that their proceedings should be kept secret from me". Thereupon he appointed them a Clerk of his own

choosing, "which before used to be of their own choice, and this they are very uneasy under".[17] Uneasy or not, the Assembly was forced to submit, for Carlisle had the force of law on his side. Nevertheless, succeeding governors allowed the House to return to its old right which was never again seriously challenged.[18]

The regular procedure was for every completely new Assembly to choose its own Clerk and Messenger and then send them up to the Governor and Council to be sworn. From 1722 onwards it also commenced the regular practice of appointing an official Chaplain for the reading of prayers, but he was not sworn as the Clerk and Marshal were, though he received a regular salary for his services.[19] During the seventeenth century the Assembly's servants were paid out of the regular revenue in the correct constitutional fashion by governor's warrant to the Receiver-General, but at the beginning of the following century the House, at the same time as it had embarked upon a policy of vesting the annual funds in commissioners of its own choosing, began to pay its servants from the hands of these men, on the direct authority of the tax Acts themselves.[20] Even after the House reverted to the more correct practice of vesting the annual funds in the Receiver-General, it still continued to pay its servants direct out of his hands on the authority of clauses inserted in the periodic tax Acts.

(ii) The Agents.

The only other public official over whose appointment the House gained the predominant influence was the Agent employed from time to time by the island legislature in London. It was the great constitutional crisis of 1677-80 that first convinced the colonists of the need to have official representatives in London to watch over Jamaican interests at Whitehall. The vigorous personal, but quite unofficial, services of leaders like Sir Thomas Lynch, Sir William Beeston and Samuel Long in London at that time showed the obvious advantages of having somebody on the spot whenever danger should arise. The English authorities themselves were quite agreeable, and freely granted the colonists permission to make such an appointment whenever they so desired.[21]

Accordingly in 1682 a three years' Act was passed authorising the appointment of an Agent or Agents, but leaving the actual selection and control to the Governor and Council[22] who requested Sir Charles Littleton and Sir William Beeston to undertake the task. This Act expired at the end of 1685, though the Agents may have

continued their services voluntarily for a while longer. In 1691 the House brought in another Agency bill to re-establish the service, but strove to vest complete control in a committee of four Councillors and seven Assemblymen, thereby offending Lord Inchiquin who refused it his assent.[23] Two years later, however, Inchiquin being dead and Sir William Beeston being his successor, a further bill was prepared and passed, appointing Gilbert Heathcote, Bartholomew Gracedieu and John Tutt, merchants of London, to be Agents for eleven years, but vesting their management in a joint committee of the legislature consisting of two Councillors and five Assemblymen, subject only to whatever directions the legislature as a whole might give them when in session.[24] This Act expired in 1704 but, despite the introduction of Agency bills into the House in 1705 and 1709, nothing definite was done about reviving the service until Lord Archibald Hamilton's violent disputes with the Assembly from 1713 to 1716 made the services of an Agent an urgent necessity. But naturally the sort of Agent that the House wanted was quite unsatisfactory to the Governor and Council so, despite the introduction of further bills in 1713 and 1715, nothing was accomplished because the representatives were determined to select and control the Agent, and the Board would in no wise consent.[25]

Being thus defeated in every attempt to secure an Agency Act to their liking, the representatives took up a large public suscription, realising some £1100, which they entrusted to their former Agent, Sir Gilbert Heathcote, to defray the cost of representing them in London. Sir Nicholas Lawes, Hamilton's successor, in 1718 did his best to persuade the Assembly and Council to come to terms on the question by reverting to the example of the Act of 1693 (i.e. selecting the Agents by agreement between themselves and managing them by means of a joint committee of correspondence) but, despite the introduction of two or three bills in the course of the next couple of years, they failed to reach agreement because the representatives still insisted on an undue share of influence and the Council would not give way. Lawes on 16th June, 1720, informing them why the Council had rejected the last of these measures, explained that they had assumed to themselves "to name the Agent in the bill without consulting or advising with the Council, and fixed a majority of the commissioners in your own House, excluding the Governor from being privy to, or acquainted with, the transactions between you and your Agent, which I could never allow of".[26] Not in the least dismayed, the Assembly continued to employ unofficial agents of its own choosing, selecting Alexander Stephenson in 1724, Edward

Charlton in 1726, and Charles Delafaye in 1728; the last being continued in office when, at long last, a regularly constituted *Agency Act* (upon the 1693 model) was passed in 1732.

From this time onwards there was a long period of harmony between the Houses on the question, the long and satisfactory agency of John Sharpe (1734-56) being in no small measure responsible. The Act of 1732 named Charles Delafaye and John Gregory as Agents and entrusted their direction to a joint committee of correspondence consisting of two Councillors and the Speaker and four other Assemblymen "pursuant to such powers and authorities as the said commissioners shall from time to time receive from the Council and Assembly when sitting". Any four commissioners, of whom one was always to be a Councillor, were constituted a quorum, and the powers of the committee in the intervals between legislative sessions extended not only to giving the Agents whatever instructions they though fit, but even to removing one or both of them and appointing others in their stead.[27]

The Act appointing John Sharpe in 1734 was in all essential respects identical with the above, and the conditions of the Agency remained unchanged for over twenty years. Sharpe's death in 1756, however, necessitated the choice of a successor, Lovel Stanhope being appointed. The same broad conditions governing the service remained unchanged, except that the commissioners were increased to ten, three Councillors and seven Assemblymen, the quorum to be five, of which one always to be a Councillor. Stanhope remained in office for six years, by which time the Assembly had grown dissatified with him and he resigned. In his place Stephen Fuller was appointed on what was destined to be a record of service, he remained in office for thirty years (1764-94). The Act appointing him—a three year's measure—made a drastic alteration in the size of the Committee of Correspondence, making it consist of four Councillors, the Speaker, and no less than twenty-four other Assemblymen; the quorum to be five, of which one to be a Councillor. During the Assembly's great struggle with Governor Lyttelton (1762-66) over the question of parliamentary privilege, however, the necessity for this kind of quorum proved a great embarrassment to the representatives when they wanted to enlist Fuller's help against the Governor, for they could not get a legal quorum together on account of Council members refusing to attend! The result was that Fuller was often sent instructions by a committee that was not strictly legal and found himself considerably embarrassed in consequence. When, therefore, in 1767 the time came round for a renewal of Fuller's agency, the

House strove to do away with the necessity of having any Councillors to make up the quorum, whilst the Council struggled hard to retain the provision. "There was no precedent", argued the Board, "for a quorum of commissioners without one of the Council"; the possibility of one branch of the legislature giving instructions to the Agent without the knowledge of the other must be guarded against.

Finally a curious compromise was come to, the Council withdrawing its objections, and the House agreeing to increase the number of Council commissioners to seven, the number of its own to be twenty-three, and the overall quorum still to be five. "Thus in the case of a difference of opinion . . . between the two bodies of commissioners . . . wherein each of them adhere unanimously to their different opinions, then, in such case, the commissioners of each body . . . are hereby empowered to act separately, anything in this Act to the contrary notwithstanding."[28] This arrangement, despite its inconsistency, remained unchanged for the rest of our period and managed to give satisfaction only because differences between the two Houses did not again reach breaking point, fortunately, for if they had done the Agent's position would have become a sheer impossibility.

One last point deserves attention before the story of the Jamaican Agents is brought to a close. In 1794 the House, in framing a new Agency bill, named as commissioners of correspondence the entire Council and Assembly. The bill passed and became law. This was, on the face of it, an absurd provision, but it was wholly consistent with the Assembly's policy of erecting the legislature—or especially the people's part of it—into the executive organ. Viewed in this light, one's feeling of absurdity gives place to wonder that in the slow outworking of time the logic of events should be so complete.

(iii) Tax Receivers.

The story of the Assembly's early—and sometimes successful—attempts to control the appointment of the island Treasurer, its indignation when the island treasury passed into the hands of a Receiver-General appointed by letters patent in 1674, and its subsequent determination to vest the "annual" funds in servants of its own, is told in detail in Chapter VII. Suffice it here to say that the House finally desisted from these efforts and allowed all the revenue, "annual" as well as "permanent" to pass through the Receiver-General's hands. It did this not because it was compelled, but because it discovered that what mattered most was not who held the money,

but rather *how its proper expenditure could be safeguarded*; and it was tolerably satisfied with the safeguards that it was able to establish.

§ 5. The Field of Vice-Regal Appointment, 1783

Despite the number of patent appointments and the few positions in the gift of the Assembly, the Governor of Jamaica in 1783 still retained a field of appointment that was moderately extensive.

(i) Judicial Posts.

He enjoyed the right, for instance, with the Council's consent,[29] to appoint the Chief Justice and Assistant Judges of the Supreme Court and the Courts of Assize, the Chief Judges and the Assistant Judges of the various Courts of Common Pleas, the Masters in Chancery,[30] and the Justices of the Peace in the various precincts. At no time did the Assembly ever try to participate in the appointment of judges or justices. Throughout the bulk of our period the Governor could also dismiss them even without Council's consent, but had without delay to report the action, with his reasons, to the Secretary of State; and if his reasons were not good ones he was almost certain to be put to the humiliation of having to reinstate them.[31] In 1751 the legislature attempted to reduce the dependence of the judges on the Governor by passing a law to make the commissions of the judges of the Supreme Court tenable "during good behaviour", but this was considered an infringement of the prerogative and speedily disallowed in England. Nearly thirty years afterwards it again returned to the charge with a further Act for the same purpose which this time was allowed to remain in operation.[32] Thenceforward the Governor could suspend a Supreme Court Judge or Judge of Assize only if five of the Council were consenting, and he still had to remit to England his reasons and give the suspended person every opportunity to justify himself.

(ii) Military Commands.

Another field in which the Assembly never sought to interfere in either appointment or dismissal was the military sphere. All officers of the island militia were commissioned by the Governor and were liable to dismissal by him. Similarly the commanders of the various forts were always his appointees, as also the Captain of the train of artillery and the Storekeeper. The island Engineer was rather an anomalous appointment. He was selected and sent out at the

island's request by H.M.'s Board of Ordnance. The Governor then recommended him to the Assembly for a suitable salary which the House invariably granted. The colonists certainly looked upon him as "their own engineer"[33] in the sense that they paid him and could influence his actions, but it seems almost certain that he was not actually commissioned by the Governor.

(iii) Miscellaneous Offices.

The Governor had a right to appoint to a variety of other offices, perhaps the most valuable of which was the "Messenger for the carriage of Public Despatches" which has already been described. Others were the Superintendencies of the Maroon towns (Trelawny Town, Accompong's Town, Moore Town, Charles Town, and Scott's Hall) in each of which a Superintendent or Warden resided at a salary of £200 a year.[34] Finally comes the Governor's right of appointment to a group of offices that made their appearance only towards the end of our period. These were the water-bailiffs' or Harbour Masters' positions at Kingston, Gravesend (Black River) and Martha Brae (Falmouth)[35] which appear to be the only harbours at which, by 1783, this kind of appointment had been made.

Chapter XIII

CONCLUSION: ISLAND CONSTITUTIONS IN 1783

By the close of the eighteenth century there were in the older West Indian colonies two possible interpretations of the constitution; the theoretical, and the actual or real. The first was that embodied within the clauses of the Royal Commission and Instructions; the second was a far more difficult complex, defined in part by those documents, but much modified by the development of constitutional conventions and positive island laws. Neither interpretation lacked exponents. For the first we have Thomas Pownall's declaration that "the King's Commission . . . becomes the known established constitution of that province which hath been established on it, and whose laws, courts, and whole frame of legislature and judicature are founded on it. It is the charter of the province".[1] The opposition view is best represented by James Straker, a member of the Barbadian Assembly, who, in a vigorous speech against Governor Cunninghame in 1783, flatly contradicted an assertion by the latter that the constitution of the colony was wholly founded upon the King's Commission. "If this doctrine be true," he declared, "our laws are no more than so many rules among ourselves during the royal pleasure, and all the rights and privileges of this House, and all the properties and liberties of the people, are to give way not only to the interest but the will of the Crown."[2]

The theoretical view had remained practically unaltered since the Restoration settlement of the late seventeenth century, by which the executive power within each colony had been vested in the Governor and Council; and the legislative power jointly in the Governor, Council, and Assembly—with the House very much the junior partner. This scheme of things had attained its zenith in Barbados during the governorship of Sir Richard Dutton, in Jamaica during the governorship of Lord Carlisle, and in the Leeward Islands in the administrations of governors Hamilton and Hart. These men compelled the planters to give up many of their earlier customs in favour of more orthodox "Restoration" practices. After many years

of trial, however, these new methods failed to satisfy the colonists, who thereupon sought a return to the freer usages of the past—the popular movements of the eighteenth century being, in part, their successful strivings to accomplish this. No wonder, therefore, that we find flourishing throughout the islands in the late eighteenth century so many customs reminiscent of early—even Cromwellian times. The memory of those early practices in Barbados and the Leeward Islands had, in fact, never died. At first supplanted, they returned later with enhanced vigour, and were carried to their logical conclusion. The popular right to share in certain appointments, to join in the audit of public accounts and the issue of public money, and to participate in the ordering of public works—all of which are reminiscent of Barbados and Antigua in Commonwealth times—were revived in the eighteenth century, some of them to become firm features of all the constitutions, the Jamaican as well as the rest.

Despite the great changes thus wrought in the constitutional system, practically no attempt was ever made to keep the terms of the vice-regal Commission and Instructions up-to-date. Consequently, with the passing of time, these documents ceased in many particulars to be a trustworthy guide to existing practices. Governor Cunninghame of Barbados, a discerning if somewhat high-handed administrator, in 1780 justifiably complained to Lord George Germaine of the "hardships imposed on a Governor at this distance by the instructions given, which are diametrically contrary to the laws of this island, acquiesced in for half a century. If the Lords Commissioners of Trade", he added, "will take the trouble to compare the Instructions and laws of this island, and explain to the Governor how far these laws are in force, it will be satisfactory to me, as I have at this instant found our most experienced lawyers puzzled."[3] Germaine's reply is instructive. "I am sensible", he wrote, "of the difficulties a governor must find himself under when his Instructions militate against the common practice and even established laws of his government, and heartily wish more attention was given to review and amend the Instructions upon every new appointment, for I am afraid it too often happens . . . that the same instruction which was given half a century ago is carefully copied over without variation to the present time notwithstanding the changes which may have taken place in the government."[4]

Indeed, by the end of the eighteenth century the Commission and Instructions bore a resemblance to the mature constitution that was just close enough to be confusing. The outward frame of government which they prescribed still obtained as fully as ever it had, but many

of the constitutional relationships existing within that frame had become completely divorced from all imperial intentions. The government still consisted of a Governor appointed from England, a Council similarly chosen, and an Assembly popularly elected from among the freeholders. The relationships between these various branches should have followed English precedents as closely as possible. On the legislative side they did so, but on the executive side they certainly did not. Many a governor of the late eighteenth century went out to the islands expecting, like Cunninghame, to wield full executive authority in the manner indicated by his documents of appointment. He was not in a position to know how very obsolete these had become. Upon his arrival he found himself in a most unexpected situation. In judicial and military affairs he found his essential executive authority generally unimpaired, though the legislature had by law laid down the manner of its exercise. He still preserved power with his Council's consent to appoint judges,[5] military officers, and a varying number of other government officials. In external affairs, too, his powers were unrestricted. Negotiations with other governments were managed by the Council and himself alone, acting in conjunction with the Secretary of State. Moreover, he and the Council were correctly responsible for the due execution of all local laws, though in ordinary circumstances the conduct of civil and criminal cases proceeded automatically without their special initiation or intervention. They also possessed exclusive authority over all military stores and provisions sent from England: these being no charge upon the local treasury, any attempted interference by the local Assembly would have been unjustifiable.[6] Similarly the Governor enjoyed a position of personal command over any regular troops which might be present within his province, being able to join with their commanding officer in regulating their movements.[7]

In the important sphere of local finance, however, and works dependent on it, an incoming governor found his powers almost completely curtailed, the Council and Assembly having usurped all effective executive authority. Orders for the carrying out of public works and services, including works of defence, were given by joint committees, some of them permanent and some temporary. All consequent accounts had to pass the scrutiny of the Assembly, whose written authorisation in some shape or form was a condition indispensable to payment.[8] The Governor and Council of their own authority could authorise practically nothing. As early as 1745 Governor Robinson of Barbados had written that "the Governor

[could not], though with the approbation of the Council, call for the least pittance out of the public fund, on any emergency how pressing soever, without . . . a previous application to the Assembly".[9] The same was true of all the Leeward Islands, and although the Jamaican Governor and Council did possess a small permanent revenue it was so inadequate as to be of little avail.

Where works or repairs were entrusted to bodies of commissioners—as they almost always were—the Governor's authority was reduced to a matter of mere advice and recommendation, which the commissioners could either accept or ignore. The impotence of his position under such circumstances is well illustrated by the case of Governor Cunninghame in Barbados, 1780. An Act of the previous year had raised supplies for the construction of a redoubt, but had left the whole control to the discretion of a joint committee, the Governor being excluded from all influence. Though he held strong views upon the manner in which the work should be executed, he was quite powerless to force them upon the commissioners, being compelled to use what influence he could only by way of exhortation and advice.[10] A similar state of affairs existed in Jamaica where the Commissioners for Fortifications managed the defences so unskilfully yet extravagantly that both Governor Dalling (1777-81) and his successor, Governor Campbell, gave up all hope of improvement and besought the English government to assume complete responsibility for the island defences.[11] "The political contests of Jamaica for some time past," declared Campbell, "point out the impropriety of leaving the sole direction of the forts and fortifications to the Assembly who avail themselves of such powers to manifest their disrespect and ill-will to a governor by putting a stop to military works, however essential for the safety of this island."[12] But the imperial authorities were unwilling to undertake the task and left the Governors to their own devices.

Similarly in the sphere of appointment the Governor's powers were considerably reduced. Of the few positions of worth which the Crown still left to his disposal, the Assembly in all islands but Jamaica had robbed him of quite a number. Especially was this true of Barbados, where the Treasurer, the Comptroller, the Storekeeper, the Agent, and several others were chosen directly by the House. The true nature of this encroaching tendency was not lost upon some of the governors. "The Assembly", wrote Cunninghame, "is endeavouring to rob the Crown of the executive power, and when thwarted in their purposes are ready to throw everything into confusion".[13] But all such protests were in vain. Cunninghame's

zeal as much as his greed resulted in his recall, and his successor went out authorised to concede everything which he had fought so stubbornly to preserve.[14]

From these considerations it will be seen that though a West Indian governor in 1780 still enjoyed a place of considerable pre-eminence and dignity within his government, this was due more to his traditional importance as an imperial officer, the King's representative, the local Commander-in-Chief and Chancellor, than to the actual power which he could exert over the local legislature in matters of expenditure and domestic policy. The fact of the matter is that Cunninghame was right. The Assembly *had* robbed the Crown of a portion of its executive authority, and by Governor Parry's Instructions (1783) the imperial authorities showed their willingness to acquiesce in the loss. It is that which makes the years 1782-3 the close of an epoch in the constitutional struggles of these islands, and a fitting place at which to close our story. Thence-forward executive authority within the older West Indian colonies was clearly divided, the Governor retaining it in respect of some departments of the island administration, while the Council and Assembly—with the House as the more active partner—jointly exercised it in respect of others. In mere formal matters the correct Executive continued still to enjoy its authority, but in the more weighty matters of finance, with the works and in some cases the appointments dependent upon it, the two Houses of the legislature had usurped control. Their achievements in this respect are interesting when compared with contemporary developments in England and on the American mainland.

English political experience in the eighteenth century demonstrated the convenience of choosing the King's ministers from the dominant party in Parliament, but the titular right of the Crown to administer the whole realm was at no time brought into dispute. The people claimed merely to share in the selection of the agents by whom that administration should be conducted. These should retain office only as long as they enjoyed the support of Parliament, which never at any time claimed a right to issue actual orders and directions to the Cabinet. In the West Indian islands on the other hand, the agitation for the popular selection of such Crown agents as governors and councillors had died with the Commonwealth. After that, popular strivings concentrated merely on the usurpation of *certain portions* of the royal jurisdiction—those connected with finance—with the result that in these fields the Councils and Assemblies came to exercise direct executive power and, as a measure of convenience,

to set up bodies of commissioners to give effect to it, such commissioners being liable to receive instructions from the parent Houses.[15] In self-governing spirit, therefore, there was considerable similarity between Assembly strivings in the islands and the development of Cabinet government in Britain; but beyond that no strict parallel exists. They differed not only in their constitutional origins but in their effects as well; for the English device ultimately brought *all* administration and policy within the control of Parliament, whereas in the islands the Assembly's control was confined to matters directly or indirectly dependent upon finance.

But if there was little parallel between West Indian political development and that of Britain, there was a marked parallel between it and that of the American colonies. Most of the latter in the eighteenth century enjoyed constitutions similar to those of the islands, and political development proceeded upon much the same lines. Similar problems produced similar results. The Assemblies in many of the mainland colonies usurped powers over finance which led to their encroachment into the fields of public works and appointment. In most of them joint committees became a common device for conducting public services, and in many the appointment of treasury officials and all others whose salaries were dependent upon the treasury, came within the direct control of the popular House.[16] The constitutional advances made within the West Indian islands were therefore no mere accident, but were in keeping with parallel developments which were taking place in all other colonies possessing royal government. The contribution which the West Indian colonies made to the common political experience of the eighteenth century has been too often underrated. Especially is this true of Barbados, whose positive political gains throughout that century show that she, even more than Jamaica, was then the true leader of West Indian radicalism.

We leave the islands in 1783 almost at the height of their political growth. The early nineteenth century was to witness more a consolidation than an actual extension of the Assembly's powers. Continued usage strengthened their claims to all previous gains. The places within their gift in 1783 remained there throughout the succeeding age. Joint committees became in many cases departmentalised, and continued the regular mode of authorising public expenditure—a proceeding which was just as anomalous in the nineteenth century as it had been in the eighteenth, but to which the planters clung tenaciously throughout the remainder of their free political existence, until the vicissitudes of the mid-nineteenth century

forced most of them to surrender all their old representative institutions, together with all the paraphernalia that attached to them.[17] But the story of this consolidation and decline—which is necessary to a full understanding of present-day West Indian political institutions—must necessarily await further research.

APPENDIX

WEST INDIAN GOVERNORS TO 1783

(i) JAMAICA

Name	*Administration*
Edward Doyley	1661–62
Lord Windsor	1662
Sir Chas. Littleton (Deputy-Gov.)	1662–64
Sir Thos. Modyford	1664–71
Sir Thos. Lynch (Deputy-Gov.)	1671–74
Lord Vaughan	1674–78
Lord Carlisle	1678–80
Sir Edward Morgan (Lieut. Gov.)	1680–81
Sir Thos. Lynch	1681–84
Hender Molesworth (Lieut. Gov.)	1684–87
Duke of Albemarle	1687–88
Francis Watson (President)	1688–90
Earl of Inchiquin	1690–92
Sir Wm. Beeston (Lieut. Gov.)	1692–99
(Governor)	1699–1702
William Selwyn	1702
Thos. Handasyd (Lieut. Gov.)	1702–04
(Governor)	1704–11
Lord Arch. Hamilton	1711–16
Peter Heywood (President)	1716–18
Sir Nicholas Lawes	1718–22
Duke of Portland	1722–26
John Ayscough (President)	1726–28
Robert Hunter	1728–34
John Ayscough (President)	1734–35
John Gregory (President)	1735
Henry Cunningham	1735–36
John Gregory (President)	1736–38
Edward Trelawny	1738–52
Chas Knowles	1752–56
Henry Moore (Lieut. Gov.)	1756–59
George Haldane	1759
Henry Moore (Lieut. Gov.)	1759–62
Wm. Henry Lyttelton	1762–66
Richard H. Elletson (Lieut. Gov.)	1766–68
Sir Wm. Trelawny	1768–72
John Dalling (Lieut. Gov.)	1772–74
Sir Basil Keith	1774–77
John Dalling (Lieut. Gov.)	1777–78
(Governor)	1778–81
Archibald Campbell	1781–

NOTE: The dates given above refer to their appointment and supersession rather than to the actual period of their residence within the colony.

(ii) BARBADOS

Name	*Administration*
Charles Wolverston	1628–29
Henry Hawley	1630–40
Henry Huncks	1640–41
Philip Bell	1641–50
Francis Lord Willoughby	1650–52
Sir George Ayscue	1652
Daniel Searle	1652–60
Thomas Modyford	1660
Humphrey Walrond (President)	1660–63
Francis Lord Willoughby	1663–66
William Lord Willoughby	1667–73
Sir Peter Colleton (Deputy Gov.)	1673–74
Sir Jonathan Atkins	1674–80
Sir Richard Dutton	1680–85
Edwin Stede (Lieut. Gov.)	1685–90
James Kendall	1690–94
Francis Russell	1694–96
Ralph Grey	1697–1701
John Farmer (President)	1702–03
Sir Bevil Granville	1703–06
William Sharp (Pres.)	1706–07
Mitford Crowe	1707–10
Robert Lowther	1711–17
William Sharp (Pres.)	1717–20
John Frere (Pres.)	1720–21
Samuel Cox (Pres.)	1721–23
Henry Worsley	1723–31
Samuel Barwick (Pres.)	1731–33
Lord Howe	1733–35
James Dottin (Pres.)	1735–39
Robert Byng	1739–40
James Dottin (Pres.)	1740–42
Sir Thos. Robinson	1742–47
Henry Grenville	1747–53
Ralph Weekes (Pres.)	1753–56
Charles Pinfold	1756–66
Samuel Rous (Pres.)	1766–68
William Spry	1768–72
Samuel Rous (Pres.)	1772–73
Edward Hay	1773–79
James Cunninghame	1780–82
John Dottin (Pres.)	1782–83

(iii) THE LEEWARD ISLANDS

Note: From 1663 to 1671 the Leeward Islands were under the general jurisdiction of the Governor of the Caribbee Islands resident in Barbados.

Name	*Administration*
Sir Chas. Wheeler	1671–72
Sir Wm. Stapleton	1672–86
Sir Nathaniel Johnson	1686–89
Christopher Codrington (the Elder)	1689–98
Christopher Codrington (the Younger)	1699–1704
Sir Wm. Mathew	1704
John Johnson (Lt. Gov.)	1704–06
Daniel Parke	1706–10
Walter Hamilton (Pres.)	1710–11
Walter Douglas	1711–13
Walter Hamilton (Lt. Gen.)	1713–15
Wm. Mathew (Lt. Gov.)	1715–16
Walter Hamilton	1716–21
John Hart	1721–27
Wm. Mathew (Lt. Gen.)	1727–28
Lord Londonderry	1728–29
Wm. Mathew (Lt. Gen.)	1729–33
Wm. Mathew (Governor)*	1733–52
Gilbert Fleming (Lt. Gen.)	1750–53
George Thomas	1753–66
James Verchild (Actg. Gov.)	1766–68
William Woodley	1768–70
Richard H. Losack (Actg. Gov.)	1770–72
Ralph Payne	1772–76
Craister Greathead (Actg. Gov.)	1776–77
Wm. Mathew Burt	1777–81
Anthony Johnson (Actg. Gov.)	1781
Thomas Shirley	1781–90

*On furlough in England 1750-52, and died soon after his return to the Leeward Islands.

CHAPTER REFERENCES

Chapter I

1. Authorities for these and all other unsupported statements in this chapter are to be found in Harlow, V. T., *A History of Barbados, 1625-85*, and Williamson, J. A., *The Caribbee Islands under the Proprietary Patents.*
2. C.O. 1/3. Commission dated 13 Sept., 1625.
3. The original grant of 2 July, 1627, in Latin is in C. 66/2437, No. 15. An English translation of it appears in C.O. 29/1, pp. 1-12.
4. C.O. 1/5, No. 11.
5. For powers of taxation a further grant of 7 April, 1628, C. 66/2455, No. 4, must be read in conjunction with the earlier one of 2 July, 1627.
6. For specimen Instructions from the Proprietor to a Governor, see Warner's commission received from Carlisle on 29 Sept., 1629. C.O. 29/1, pp. 13-16.
7. As, for instance, Hawley's arbitrary trial and execution of Tufton; or Henry Huncks' agreement with the Barbadian planters wherein he granted them more favourable terms as to rents and taxes than Carlisle would have desired, but the latter was unable to repudiate the agreement.
8. Egerton 2395, f.156. John Hilton's account of early Nevis.
9. Witness Hawley's execution of Sir William Tufton and others in 1631, and Warner's execution of an unknown man "for defaming Colonel Jefferson" some years later.
10. For all these points on taxation see the evidence of Captain Strong (Barbados) and William Roper and Mr Horne (St. Christopher) before the Committee of the House of Commons, 1647. Trinity College Dublin MSS, G4, 15.
11. Mention of the Antiguan Assembly is made in *Cal. S.P. Col., Addenda, 1574-1694*, No. 194. William Roper in evidence before the Committee of the H. of C. in 1647 spoke of "the" Assembly of St. Christopher. The local Council, he said, were "of my Lord's choosing and not of the Assembly's". Trinity College Dublin MSS, G4, 15.
12. C.O. 1/12 contains papers on Waad's case.
13. An Assembly was in being in Montserrat in 1664. *Cal. S.P. Col., 1661-8*, No. 804 II.
14. *Cal. S.P. Col., 1574-1660*, p. 466.
15. Sinckler, E. G., *Barbados Handbook* (1912), p. 7.
16. See extracts from the first two Council Books, made by Governor Pinfold, copies of which are in the Davis Papers, Box 5, Royal Commonwealth Society, London.
17. S.P. 25/69, p. 290, contains a commission from the Council of State to Daniel Searle, 13 June, 1653. Cf. a later commission of 20 March, 1657, from the Protector, Egerton 2395, f.114.
18. If this had not been so, the Walronds and their party would not have been able to overthrow the government in 1650-1. The power which the Council had usurped gave to Bell the appearance of comparative weakness.
19. C.O. 1/11, No. 59, Bayes to the Council of State, 30 June, 1652. Cf. an extract from a Description of Barbados written in 1651 and preserved among Trinity College, Dublin, MSS. G4, 15, which states that "the Council are select men picked out of the Assembly." A copy of this "Description" is in Davis Papers, Box 5, Royal Commonwealth Society, London.

20. The commissioners in each case were specifically named in the Act which appointed them. See C.O. 1/11, *An Act for the speedy fortification of marine parts of this island*, 3 Aug., 1650; and *An Act for the better encouragement of trade*, 9 Aug., 1650.
21. C.O. 1/11, No. 66.
22. Trinity College Dublin MSS. G4, 15.
23. S.P. 25/17, pp. 17-19. Commission dated 1 Feb., 1651.
24. Searle to the Council of State, 19 Sept., 1653, C.O. 1/12. Many, however, are the records which bear witness to this spirit, which did not decline as the decade advanced.
25. Egerton 2395, f.287.
26. Bayes to Council of State, 30 June, 1652, C.O. 1/11.
27. Ibid. Cf. also Jennings, *Acts*, No. 64. In 1655, however, the Governor and Council were by a subsequent law restored to their former jurisdiction.
28. *Acts and Statutes of Barbados*, London, 1654.
29. Bayes to Council for Foreign Affairs, 4 Feb., 1653, C.O. 1/12.
30. Both these governors had treated the proceeds from these taxes as they would a source of private income. Out of them each was obliged to maintain a Court of General Sessions once a year and to bear the cost of the Gaol, the State House, and the Council at all meetings. C.O. 1/11, No. 66.
31. Jennings, *Acts*, Nos. 57, 83, 85, and 89.
32. See Preamble to ibid., No. 57.
33. Searle to Council of State, 19 Sept. and 19 Oct., 1653, C.O. 1/12.
34. S.P. 25/69, p. 290.
35. Willoughby to Charles II, 8 Aug., 1665, C.O. 1/19.
36. Coun. Mins., 7 March, 1667, C.O. 31/1.
37. Atkins to Lords of Trade & Plantations, 18 Oct., 1677, C.O. 1/41, No. 72.
38. Jennings, *Acts*, No. 63.
39. Ibid., No. 57, Tax Act of 12 March, 1652.
40. Ibid., Nos. 83 and 85, Tax Acts of 16 March and 28 April, 1653, resp.
41. Barbadian Council Minutes, 9 Jan., 1655. Author's transcripts, p. 60. These transcripts are now deposited in the Public Record Office, London.
42. Barb. Council to the Council for Foreign Plantations, 1661, C.O. 31/1, p. 49.
43. As when the Governor and Council on 26 June, 1655, contracted direct with Colonel Richard Hawkins for the erection of a gaol, see Coun. Mins of that date, Author's transcripts, p. 81 (P.R.O., London).
44. Ibid., p. 20.
45. Ibid., p. 21.
46. Ibid., p. 40.
47. C.O. 1/15, No. 69. This Committee of the Public Treasury, or commissioners of the public debts, were the ordinary joint-committee which existed to examine the Treasurer's accounts.
48. Joint-Committee superintendence of public works had already begun, though the remaining evidence is not sufficient to show the extent to which it was employed. On 7 July, 1658, however, a standing joint-committee was set up "for the examination of the accounts of the public treasury so often as they shall think fit, as also viewing the forts, bar, and all other public works". See Coun. Mins of that date, Author's transcripts, p. 306 (P.R.O.).
49. Jenning's *Acts*, Nos. 59, 73, and 74.
50. Ibid., Nos. 19, 20, 22, 29, 64, 71, 91, and 97.
51. It is obvious from Bayes to the Council of State, 30 June, 1652 (C.O. 1/11, No. 59), that even at his early juncture the Barbadian House sat separately from the Council. In the Leewards, however, it is certain that in Montserrat, Nevis, and Antigua the Assemblies met along with the Councils. Nevis continued this practice until after Governor Wheeler's time (C.O. 1/28, No. 25) Antigua continued it until the early 1680s (Cf. Ant. Coun. Mins. of 1679 in C.O. 1/25, with those of 1682 in C.O. 1/50, No. 81). In Montserrat the Council and Assembly continued to meet together until 16 Jan., 1696 (C.O.

155/2, p. 515). It is extremely probable that in St Christopher, too, the House sat along with the Council until 1672 or thereabouts, but by 1676 they had commenced separate sittings, though sometimes they would hold a combined meeting over some matter of unusual importance (see Mins of Gov., Coun., and Ass., 23 July, 1678, C.O. 1/28, No. 69).

52. See Petition of English Smith against Gov. Stokes of Nevis (1657?), in C.O. 25/78, pp. 48-50. Cf. Petition of Antiguans against Gov. Keynell (undated), in Add. MSS. 11411, f.1; also the Petition from St. Christopher against Gov. Everard, 25 Jan., 1659, in C.O. 1/13. See the *Thurloe State Papers*, Vol. iii, p. 754, for Gregory Butler's testimony concerning Everard in 1655.
53. Thus the representatives did not persist in their earlier demand that the Speaker have power to summon the attendance of Councillors as well.
54. The chief authorities for this Antiguan dispute are to be found in Rawlinson MSS. A. vol. 29, pp. 376-406.
55. Egerton 2395, f.68. Commission from Cromwell to Keynell, 6 Aug., 1656.
56. See an *Act for the raising a public treasury*, 10 Sept., 1668, C.O. 154/2, p. 270.
57. Spanish settlement in Jamaica dated from 1509.
58. This Council was summoned by writ or writs issued in the King's name, but no record remains of how the representation was arranged, or what election(s) took place. See Whitson *The Constitutional Development of Jamaica* p. 20, n.2.
59. Extract from *An Act for the speedy raising of a public treasure*, C.O. 139/1, p. 44.
60. See Acts for all these purposes passed in January, 1664,, and recorded in C.O. 139/1. They are also printed in Whitson, Appendix III.
61. See *An Act for preventing neglect and fraud in receiving customs and public money*, an *Act for issuing money out of the public treasury*, and an *Act for the speedy raising of a public treasure*, all in C.O. 139/1, and printed in Whitson, Appendix III.
62. C.O. 139/1, pp. 70-2, and Whitson, p. 33.

Chapter II

1. The governmental relationships which had existed within royal Virginia for twenty years prior to 1642 had been anything but satisfactory, the governor being tied hand and foot to his councillors, whom he was unable to suspend yet who could out-vote him at the council table. The conception of a governor as a vice-regent freely administering his government as the personal representative of the Crown and subject only to the *advice* of the council, which he could reject if necessary, had not yet been born. The Virginian governor and his councillors at this time were *collectively* the servants of the King. As Osgood points out, their commission was in form based upon that given in England to justices of the peace and quorum. *The American Colonies in the Seventeenth Century*, III, p. 86.
2. They were constantly subject to the English laws of trade and to English customs regulation, and were included even in the Stamp Act of 1765, most of them without violent protest (except in St Kitts and Nevis). Frere, *Short History of Barbados*, p. 76.
3. See the well-known Commons resolution upon the constitutional claims (1753) of the Jamaican Assembly, dated 23 May, 1757, and recorded in the H. of C. *Journal* of that date.
4. There was an unsuccessful attempt in 1678-80 to apply the Poynings' system of control to Jamaica (as a colony of conquest), but in face of wholesale opposition from the planters it failed. The fact was that the Crown had already cut the ground from under its own feet by an earlier grant (1661) to Jamaicans of "the same privileges to all intents and purposes as our free-born subjects of England" have, and these, once granted, could not be revoked. See Whitson, *The Constitutional Development of Jamaica*, pp. 15 and 70-110.

5. C.O. 140/2, Appendix, p. 21. By "High Court of Parliament" Modyford meant the House of Commons.
6. For fuller particulars, see Chapter I, reference No. 51.
7. Governors of Jamaica from 1709 onwards ceased taking any active part in legislative sessions of the Council: see C.O. 140/8, ff. 109-111, Council Mins., 28 January, 1709. For the position in the colonies as a whole, see the opinion of the Crown law officers, given in 1725, on the governor's position in Council during legislative sessions. Chalmers, *Opinions* of Eminent Lawyers (1814 edn.), I, p. 231.
8. For details, see Chapters XI and XII on Appointment.
9. One of the longest and bitterest disputes between Governor and Assembly over the question of parliamentary privilege was that which took place in Jamaica during the governorship of W. H. Lyttelton (1762-66) when he and the House disagreed over what immunity was possessed by members in respect of their chattels. Members claimed that they possessed the same immunities as were possessed by the members of the House of Commons, viz. immunity of chattels from distraint for the duration of each session but no longer. The Governor, on the strength of his 13th Instruction, denied that they possessed any immunity for their goods. This dispute led to an even greater conflict as to whether the House had legal power to commit offenders for breach of this privilege. It waxed so violent that all public business for some months came to a complete standstill. Finally the accession of the Rockingham Whigs to power in England in 1765 brought success to the Assembly's claims.
10. This was so in Jamaica from 1679, Barbadoes from 1681, St. Christopher and Antigua from 1719, Nevis from 1724, and Montserrat from 1746.
11. The Jamaican Council from about 1710, the Barbadian from 1741, the Nevis from 1724, the Antiguan from 1728, and the St. Christopher from 1739. The Montserrat Council, on the other hand, retained its right to amend money bills right down to the end of our period.
12. The procedure here outlined was that which operated from about 1680. For nearly twenty years before that, however, the island laws when passed in the local legislatures remained in operation only two years and then automatically lapsed unless confirmed by the Crown before the two years were up—which hardly ever happened. This system was fraught with all sorts of difficulties, which the colonists did their best to overcome by re-enacting every important law for a further two years just before it was due to lapse, and so over and over again, thereby keeping it in being. It was this unsatisfactory state of affairs which led to the change of system.

Chapter III

1. This was an important proviso, nowhere discoverable among early Virginian commissions, but early in the Restoration included among those given to the royal Governors within the new era. It was first given to Francis Lord Willoughby, Governor-in-Chief of the Caribbee Islands. See his Instructions, 16 June, 1663, C.O. 324/1, p. 19.
2. The substance of these observations is derived from comparing the prerogative powers of the Crown, as given by Blackstone (*Commentaries*, Bk. 1, Chapters VII and XIII) with the powers granted to all royal governors after the Restoration, as found in the terms of their Commissions and Instructions. When treating of the Restoration view of colonial constitutions, it is convenient to take a comprehensive view of representative documents from 1660 to 1685, for the reason that the ideas of the period did not receive expression all at the one time, or within the compass of a single document. However, the Commission given to Francis Lord Willoughby, 12 June, 1663, C.O. 29/1; the Commission and Instruction given in 1672 to his brother William, ibid; those given in 1673 to Sir Jonathan Atkins, ibid; Additional Instructions to

Atkins, April, 1674, ibid; and the Commission and Instructions to Sir Richard Dutton, 1680, C.O. 29/3; taken together provide a sufficiently comprehensive view of the Restoration settlement.

3. See an important ruling given by the Board of Trade upon a St. Christopher dispute in 1730 respecting the removal of Wavel Smith from the local Council. This ruling, which clearly enunciates the principle that colonial forms and relationships should follow the imperial wherever possible, deserves to be better known. It was embodied in a letter from the Board of Trade to Lieut. General Mathew, dated 22 Oct., 1730, and is recorded in C.O. 153/15, p. 63.
4. See Article 7 of the Instructions issued to Governor Vaughan of Jamaica on 3 Dec., 1674, C.O. 140/2 (*Ass. Journal*, I), Appendix, p. 17. See also the Instructions to Gov. James Kendall of Barbados, 19 Sept., 1689, C.O. 29/4, p. 82; and compare them with those given to the younger Codrington in the Leeward Islands, 13 Oct., 1699, C.O. 153/6, p. 461.
5. As will be pointed out in a later paragraph, the Governor was afterwards restrained from suspending councillors and Lieut. Governors except with Council's consent. He still retained, however, a free power to suspend lesser officials without that consent. The Antiguan Council in 1780 disputed the right of the Governor to suspend a judge without its consent, but Governor Burt amply vindicated his rights in that respect. After quoting precedents in his favour, he bluntly informed his Councillors that he was responsible in such a matter not to them but to the Crown alone. See Antiguan Council Minutes, 23 Nov., 1780 and 3 Jan., 1781, in C.O. 9/28. In 1782, however, Governor Archibald Campbell of Jamaica was by Article 52 of his Instructions forbidden to suspend judges and J.P.s without the consent of at least five of his Council. This was the first instance of such a restriction in any of the colonies: see C.O. 138/25, p. 67.
6. In Barbados this occurred in 1673; see Commission and Instructions to Governor Atkins, 1673, C.O. 29/1: in the Leeward Islands, in deference to the wishes of Sir William Stapleton, the change was deferred until the arrival of his successor, Sir Nathaniel Johnson, in 1686; see Johnson's Instructions, 28 Nov., 1686, C.O. 153/3, p. 219. In Jamaica the change took place in 1674, see Commission to Governor Vaughan in that year, C.O. 140/2 (*Ass. Journal*, I), Appendix, p. 16.
7. This provision had operated in Jamaica under Lord Vaughan (1674-8) but, proving unsatisfactory, had been discontinued. It was revived, however, in the early eighteenth century, being regularly applied to Barbados from the Instructions given to Governor Robert Lowther in 1714, C.O. 29/13, p. 177. It was extended to the Leeward Islands and Jamaica in the following year, see Instructions to Gov. Walter Hamilton of the Leeward Islands (1715), C.O. 153/12, p. 235, and Instructions to Lord Archibald Hamilton, Governor of Jamaica, (1715) C.O. 138/14, p. 234.
8. See, for instance, Gov. Mathew's suspension of Mr Jessup from the Council of St. Christopher, and of Colonel King from the Antiguan Council—both in 1744. C.O. 153/17, pp. 31 and 58.
9. Lyttelton even went to the length in 1762 of suggesting that the imperial government reduce drastically the Council's as well as the Assembly's powers: see Lyttelton to the B. of T., 24 Oct., 1762, C.O. 137/32.
10. C.O. 29/3, pp. 114-5, Dutton to the Lords of Trade and Plantations, 1682. It should be noted, however, that the Lords themselves had already made a beginning in an exactly similar direction, see Lord Culpeper's Instructions for Virginia, 6 Dec., 1679, C.O. 5/1355, p. 327.
11. *Cal. S.P. Col., 1680-5*, No. 463.
12. For Jamaica, see Lords of Trade and Plantations to Gov. Sir Thos. Lynch, 17 Feb., 1683, C.O. 138/4, p. 134.
13. Instructions to the elder Codrington, 1689, C.O. 153/4, p. 18.
14. Compare Article 10 of the Instructions to Gov. Thomas of the Leeward

Islands, 1753, C.O. 153/17, p. 224; with Instructions to Gov. Pinfold of Barbados, 1756, C.O. 29/17, p. 178.

15. Barb. Coun. Mins., 3 Aug., 1686, C.O. 31/1.
16. See C.O. 28/21 f.146, and C.O. 28/22, f.49, for two Orders in Council dated 18 Nov., 1730, and 19 May, 1731, respectively.
17. Robinson to B. of T., 9 Jan., 1746, C.O. 28/27, Cf. an Order in Council of 23 July, 1746, appointing John Gibbons to the island Council, ibid.
18. C.O. 28/3, No. 49, a Report of the Lords Justices concerning membership of councils, dated 4 Nov., 1697.
19. William Lord Willoughby to the L. of T. and P., 7 March, 1673, C.O. 1/30, No. 11. As the same requirement applied also to Jamaica and the Leeward Islands, it is certain that similar difficulties arose there.
20. See Commission to Sir Jonathan Atkins to be Governor of Barbados, 19 Dec., 1673 (C.O. 29/1); and that given to Lord Vaughan to be Governor of Jamaica, 3 Apr., 1674 (C.O. 140/2, *Ass. Journal*, I, Appendix, p. 15). In both Atkins' and Vaughans' time the quorum of Council was seven. Then see the Commission to Sir Richard Dutton to be Governor of Barbados, 22 Oct., 1680 (C.O. 29/3, p. 25); that to Sir Thos. Lynch to be Governor of Jamaica, 6 Aug., 1681 (C.O. 138/4, p. 3); and that to the elder Codrington to be Governor of the Leeward Is., 1689 (C.O. 153/4, p. 2). From the beginning of these three administrations the quorum was fixed at five.
21. Montserrat Coun. Mins., 12 Feb., 1726, contain a ruling on this point by Governor Hart; see C.O. 155/7.
22. This particular clause was first given in the Commission to Sir Richard Dutton of Barbados in 1680. The requisite seven constituted two more than the bare quorum, which in his Commission was fixed at five. In the Commission given to his predecessor, Sir Jonathan Atkins, the quorum had been seven and the Governor had been able to appoint up to nine. In Jamaica Governors Vaughan (1674-8) and Carlisle (1678-81) had been able to fill up to nine, but Carlisle's successors, commencing with Sir Thos. Lynch (1681-4), could fill vacancies only up to seven.
23. B. of T. to Governor Parke, 25 Nov., 1708, C.O. 153/10, p. 224.
24. C.O. 28/9, No. 23 contains such a ruling in the case of Middleton Chamberlain of Barbados, 1705.
25. The Council daily expected to receive word that Moe had been confirmed in his place. The arrival of such advice would probably have settled the dispute in Moe's favour, though even then Clark would have suffered an injustice.
26. This is clear from a letter written by Rous to the Earl of Shelbourne, 3 January, 1768, wherein he speaks of "my late appointment of Mr Moe being superseded," C.O. 28/51. A little while afterwards, however, Moe was appointed by the King to fill a later vacancy.
27. Since the longest appointed member was President of the Board, capable in the absence of any superior officer of administering the government, the matter of seniority and precedence was not without material significance as well.
28. See B. of T. ruling on this point, embodied in a letter from Lieut. General Fleming to the Montserrat Council, and recorded in Mont. Coun. Mins., 5 July, 1750, C.O. 177/6.
29. For cases and information upon the question of precedence in Barbados, see papers relating to the case of Chas. Dunbar, recorded in Barb. Coun. Mins., 15 March, 1737, C.O. 31/20. The case of Irenaeus Moe in 1766 shows that the custom still persisted even at that late period.
30. In Barbados this dated from the Commission given to William Lord Willoughby, 16 July, 1672, C.O. 29/1, p. 141. In Jamaica it dated from the Commission given to Lord Vaughan in 1674, C.O. 140/2 (*Ass. Journal*, I), Appendix, p. 15.
31. The factious behaviour of the Barbadian Council under President Sharpe in the period directly preceding Crowe's appointment was the chief cause of

this abolition of the old group authority. C.O. 319/1, p. 9 contains the circular Instruction on this matter, dated 3 May, 1707; cf. C.O. 138/12, pp. 77-8.

32. The Instructions to Mitford Crowe, 4 Jan., 1707, had contained the following clause relating to the collegiate authority of the Barbadian Council when administering the government in the absence of superiors, "it is nevertheless our express will and pleasure that in such case the said Council shall forbear to pass any Act but what shall be immediately necessary for the peace and welfare of our said island without our particular order," C.O. 319/1, p. 166. In effect, therefore, this in 1710 was made applicable to the President; see Instructions to Governor Lowther of Barbados, 1710, C.O. 29/12, p. 136.
33. See Instructions, 1722, to Henry Worsley, Governor of Barbados, C.O. 5/191, p. 374. Cf. Instructions, 1715, to Lord Archibald Hamilton, Governor of Jamaica, C.O. 138/14, p. 234 et seq.
34. The Leeward Islands in 1672 were removed from the jurisdiction of the Governor of Barbados and placed under a Governor of their own. At the close of the seventeenth century and the beginning of the eighteenth, spasmodic efforts were made to co-ordinate the separate Leeward Islands into a properly federated unit, with a federal legislature as well as the existing federal Governor, but so deep was the particularist spirit of each island that all such efforts failed, and the system of separate legislatures and administrations continued uninterrupted for the remainder of our period. The lieutenant governor of each island was, therefore, a person of considerable prominence within his own domain. For the story of the attempts at federation, see articles by C. S. S. Higham on the General Assembly of the Leeward Islands, in the *Eng. Hist. Review*, April-July, 1926.
35. It was in this year, too, that the appointment of councillors reverted to the Crown. Both provisions were really part of one and the same step; see Commission to Sir Nathaniel Johnson to be Gov.-in-Chief of the Leeward Islands, 12 Sept., 1686, C.O. 153/3, p. 201. The lieutenant governorship of Jamaica had been a Crown appointment ever since 1664, Sir Henry Morgan in that year being the first royal appointee to that office.
36. The first Instructions which made the Council's consent necessary to the ordinary suspension of a lieut. governor were those given to Walter Hamilton, Governor of the Leeward Islands, 31 Aug., 1715, C.O. 153/12, p. 235. Lieut. governors of Jamaica were similarly safeguarded from arbitrary suspension from the same year; see Instructions to Lord Archibald Hamilton, 1715, C.O. 138/14, p. 234. As in the case of Councillors, however, the Governor could, upon extraordinary occasions, suspend a lieut. governor without the Council's consent, but he had without delay to transmit to the Board of Trade his full reasons for so doing.
37. See, for instance, the Commission given in 1715 to Gov. Walter Hamilton of the Leeward Islands, C.O. 153/12, pp. 154-78.
38. Cf. the Commission granted to Walter Hamilton to be lieut. governor of Nevis, 5 July, 1707, recorded in Nevis Coun. Mins, 8 Nov., 1707, C.O. 155/3; with that given to John Marshall on 13 June, 1713, to be lieut. governor of Montserrat, recorded in Mont. Coun. Mins., of 15 June, 1713, C.O. 155/5.
39. The claim to this provisional power of assent was based upon a very superficial interpretation of a clause in the Governor's commission which empowered him "or in his absence . . . our Lieutenant General or Lieutenant Governors respectively" to "enjoy a negative voice". The claim to issue writs for election was one to which lieutenant governors had no right at all: the royal commission granted it to the governor alone and gave him no authority to delegate it to others.
40. See Codrington's special instructions to Gardner, recorded in Nevis Coun. Mins., 4 May, 1696, C.O. 155/2, p. 357.
41. See Codrington's reply to Nevis appeals, given in Nevis Coun. Mins., 20 Nov., 1697, ibid., p. 439.

42. In Nevis in 1713 writs for a fresh election were issued apparently by the lieut. governor; see Nevis Coun. Mins., 30 May, 1713, C.O. 155/4. The Montserrat Coun. Mins of 25 July, 1713, show that Governor Douglas was quite prepared to leave the power of dissolution to the discretion of the lieut. governor and council, ibid. Moreover, the Assembly of St. Christopher was dissolved in 1714 by the lieut. governor upon the report of Queen Anne's death, and he also issued the writs for the new election: cf. Coun. Mins of St. Christopher, 14 Oct., 1714, C.O. 241/2, with Ass. Mins of the same date given in C.O. 155/5.
43. Nowhere has the writer discovered the actual document wherein the governors imposed these restrictions upon their subordinates, but evidence from island procedures gives clear indication of the change. It is quite certain that from 1715 onwards the lieut. governors were shorn of many powers which they had hitherto enjoyed, and Governor Walter Hamilton was the man responsible.

    The lieut. governor of Montserrat, to whom Douglas in 1713 had allowed a discretionary power to dissolve an old and summon a new Assembly is in 1715 found addressing the Commander-in-Chief upon the matter, requesting him to authorise a dissolution and to issue new writs for a fresh election; see Mont. Coun. Mins, 28 Oct., 1715, C.O. 155/5. On 21 May, 1717, Lieutenant General Mathew, who held also the post of lieut. governor of St Christopher, himself issued a writ for the election of a fresh planter to fill an Assembly vacancy (Ass. Mins of that date, C.O. 155/5), yet in the following September we find that he had changed his method of procedure and now applied to the Commander-in-Chief for such a writ (Ass. Mins, 5 Sept., 1717, ibid.). Apparently at some time between these two dates Governor Hamilton pointed out to him the irregularity of the earlier proceeding.
44. The Governor-in-Chief, or the Lieutenant General, for instance.
45. In point of fact, throughout the latter part of the eighteenth century the lieut. governors were often absentees, so that the President of each local Council was frequently entrusted with the deputy-governorship of his island.
46. We read in the Council Mins of St. Christopher, 23 July, 1746, that a certain bill passed that Board only by virtue of the "Lieut. General's vote alone". Gilbert Fleming, the Lieut. General, was also Lieut. Gov. of the island. See Coun. Mins of that day, C.O. 241/5. The lieut. governors and the Lieut. General were regularly named in the vice-regal Instructions as members of the local councils so that their votes in legislative sessions were quite constitutional. In this their position differed radically from that of the Commander-in-Chief, who possessed a final power of veto, but no vote in the Council: see Richard West's ruling upon this point, given on 8 Jan., 1725, and printed in Chalmers, *Opinions*, I, p. 231. In Jamaica the lieut. governor, when not actually administering the government, occupied only that place in Council that his seniority (as judged by the date of his mandamus) entitled him to: see O.-in-C. dated 10 Aug., 1759, C.O. 137/31, and cf. *A.P.C., Col., 1745-66*, pp. 423-6.
47. Later chapters will indicate the manner in which the Assemblies came to encroach both upon the financial and the public works administrations of the governors and their councils. See Caps V-X inclusive.
48. Nevis Coun. Mins, 6 Aug., 1718, C.O. 155/5.
49. See directions given by the elder Codrington to Lieut. Gov. Gardner, recorded in Nevis Coun. Mins, 4 May, 1696, C.O. 155/2, p. 347.
50. Commission to Col. Thos. Hill, 14 Nov., 1689, to be Lieut. General of the Leeward Caribbee Islands, C.O. 153/4, pp. 59-61.
51. Presuming, of course, that the Governor-in-Chief was absent. If both the Governor and the Lieut. General were present at the same time, the former naturally took precedence over the latter and occupied the chair.
52. Board of Trade representation to the Crown read in the Privy Council on 19 Dec., 1711, C.O. 153/11, p. 416. Cf. Additional Instructions to Gov.

Douglas, dated 27 Jan., 1712, and recorded in Nevis Coun. Mins, 3 July, 1712, C.O. 155/4.

53. This was one of the reasons which induced the B. of T. to preserve the office throughout the 18th century. It could be given to a deserving lieut. governor as an additional reward, which brought the recipient increased prestige yet cost nothing in the giving: *Cal. S.P. Col., 1708-9*, No. 836.
54. For instance, Lieut. General Hamilton was also lieut. governor of Nevis; *Cal. S.P. Col., 1708-9*, Nos. 736 I and 836. William Mathew in 1715 was both lieut. general and lieut. governor of St. Christopher; both his commissions being recorded in St. Christopher Coun. Mins, 1 July, 1715, C.O. 241/2. In the middle of the century Gilbert Fleming was lieut. governor of St. Christopher and Lieut. General as well, see C.O. 153/16, p. 221.
55. C.O. 1/28, No. 13.
56. Instructions to Christopher Codrington, 1689, C.O. 153/4, p. 2.
57. Additional Instructions of 3 May, 1707, C.O. 153/9, p. 479. A few years later the powers of acting-governors in the Leewards were restricted in exactly the same way as they were in Barbados: see Clause 34 of Gov. Wm. Mathew's Instructions, 1733, C.O. 153/15, p. 143.
58. *A.P.C., Col. 1680-1720*, No. 1043, 8 Jan., 1708.
59. Mathew to B. of T., 20 Jan., 1728, C.O. 153/14, f.231. By "eldest" lieut. governor was meant the one who had the longest term of office to his credit.
60. Cf. *A.P.C., Col., 1720-45*, No. 237, 12 June, 1731; with commission to William Crosby, 11 May, 1731, C.O. 153/15, p. 73.

Chapter IV

1. As, for instance, the reaction in Barbados to Francis Lord Willoughby's alteration of the local courts solely by ordinance; or Governor Dutton's disregard of previous custom in the giving of judgment within the Court of Grand Sessions, which prompted the passage of a special Act compelling the governor to take the votes of the assistant judges before pronouncing judgment.
2. For the Barbadian *Act for establishing the Courts of Common Pleas within this Island* (1661), see Hall, *Acts*, No. 28. For Barbadian Acts to regulate the Court of Grand Sessions, see one of 1663, another of 1684 and yet another of 1690, all recorded in C.O. 31/3. For the Jamaican Acts of 1664, see C.O. 139/1, ff.33 and 59: and for the Jamaican Court Acts of 1681, see Baskett's *Acts of Jamaica*, Nos. 6 and 26.
3. See an *Act for establishing Courts . . . in this Island*, 22 July, 1692, C.O. 154/4, p. 151. The measure was to be, in the first instance, for only three years duration.
4. See Minutes of Antiguan Council in Assembly, 7 Sept., 1693, C.O. 155/1, pp. 257-63. Notice, too, that when in 1696 the *Court Act* had expired (for it had been only a temporary measure), the Governor and Council agreed that "there can be no courts till the Act is renewed"; C.O. 155/2, pp. 162-5. This indicates their own admission of the insufficiency of prerogative regulation (even in time of emergency) when once positive legislative regulation had been embarked upon.
5. From 1696 to 1718 they were submitted to the Solicitor-General or the Attorney-General. In the latter year, however, a special legal adviser was appointed to serve the Board, and thenceforward all Acts were sent to him for examination and report.
6. Who held office from 1701 to 1707, and again from 1710 to 1717.
7. Representation of the Board of Trade to the Crown, 1 Nov., 1705, C.O. 153/9, p. 280. Cf. Northey's adverse report, dated 1 May, 1706, upon a Nevis Court Act of Feb., 1704 (ibid., p. 333) which was similarly disallowed.
8. The Antiguan Act of 1704, even after Northey's adverse report on it, was allowed to remain in operation for four years, being disallowed only in 1708.

The reason for its rejection lay not so much in the defects that Northey had ascribed to it, as in the numerous faults found in the court procedure which it had set up; see C.O. 153/10, p. 255 for the B. of T. report to the Queen upon it, dated 23 Dec., 1708. Similarly when a further Antiguan *Court Act* of 2 March, 1716 was disallowed in 1717, it was because Northey objected to some of the regulations which it established in the making of appeals to the Crown, and not because he objected any longer to a colonial legislature taking upon itself to regulate the ordinary processes to be followed in the inferior courts: see B. of T. representation to the Crown upon this Act, 16 Oct., 1717, C.O. 153/13; and compare Northey's report upon it, ibid., p. 54.

9. The B. of T. conceded that a colonial Act might with propriety ordain the forms of procedure to be followed in chancery cases, but denied that such a law was a sufficient authority by which to make changes in the form of the Court itself. See *A.P.C., Col., 1720-45*, No. 238 for a report of the B. of T. to the Privy Council upon the Antiguan *Chancery Act* of 1728.
10. Hall, *Acts*, No. 22.
11. These Masters in Chancery date from very early times, the first mention of them being in a description of Jamaica of October, 1664, given in C.O. 140/2 (*Ass. Journal*, I), App., p. 21. See also reference to them in Lynch's description of Jamaica, 20 Sept., 1683, C.O. 138/4, p. 221.
12. This Antiguan *Chancery Act* of 3 July, 1704, was disallowed in 1705; see B. of T. report to Privy Council upon it, 1 Nov., 1705, C.O. 153/9, p. 280.
13. See mention of this Act in Mins of the General Council of the Leeward Islands, 23 June, 1705, on which day it received the assent of Acting-Governor John Johnson, C.O. 155/3.
14. See B. of T. representation upon this Act, 16 Oct., 1717, C.O. 153/13, p. 136.
15. See *A.P.C., Col., 1720-45*, No. 238 for the B. of T. report upon this *Chancery Act*. Cf. additional Instructions to the Governor of the Leeward Islands, C.O. 153/15, p. 118; with Article 44 of Gov. Wm. Mathew's Instructions, 1733, ibid., p. 179. Finally note the substance of an Order-in-Council of 30 April, 1751, C.O. 153/17, p. 103.
16. This Act, passed on 15 Aug., 1766, is recorded in C.O. 240/10. For the action of the Privy Council upon it, see *A.P.C., Col., 1766-83*, pp. 118-9. It was disallowed on 26 Feb., 1768, ibid.
17. This Montserrat *Chancery Act* of 1770 set up a court to consist of the Governor, Lieut. Governor or President, and all the Council. The Board of Trade still questioned the propriety of confirming an Act which trespassed upon so material a part of the prerogative, but in the end surrendered. It is extraordinary to perceive, however, that their decision was to no small extent guided by a completely erroneous view which they took of the Antiguan *Chancery Act* of 1728. They suffered from the delusion that it had been confirmed, and used it as a precedent for confirming the Montserrat law. They therefore used as a precedent the very case which, if properly understood, would have prompted quite the opposite conclusion!
18. It is surprising that the Jamaicans did not take advantage of the example of the southern islands to pass legislation to join their councillors with the Governor in the Court of Chancery; but they did not, the Governor remaining sole Chancellor in Jamaica to the end of our period. Actually the Jamaicans would have preferred to see the Court of Chancery taken out of the Governor's hands altogether and placed in commission, with the judges appointed from England, if necessary. In Edward Trelawny's time they pressed for such an alteration, but without success: see Trelawny to B. of T., 18 June, 1746, C.O. 137/24, and other papers in that volume.
19. For Barbadian *Court Act*, 1661, see Hall, *Acts*, No. 28, and cf. No. 22. For Nevis *Court Act*, 1732, see Baskett, *Acts of Nevis*, No. 94. For Antiguan *Court Act*, 1692, see C.O. 154/4 p. 151, and cf. later Acts in the C.O. 8 series, especially for the Act of 1721 in C.O. 8/5. For the St. Christopher *Court Act* 1711, see C.O. 240/2, pp. 1-8; and for that of 1724, C.O. 240/4, No. 59.

For Montserrat *Court Act*, 1729, see Baskett, *Acts of Montserrat*, No. 89. For Jamaican Court Acts, 1681, see Baskett, *Acts of Jamaica*, Nos. 6 and 26. These are, of course, only selected Acts dealing with the establishment and regulation of lower courts and courts of appeal. Details of Chancery Acts are given in the text itself.

20. *A.P.C., Col., 1745-66*, pp. 216-17.
21. For a copy of this 1781 Act, see *Laws of Jamaica, 1770-83*, No. 70. For the English reaction to it, see *A.P.C., Col., 1766-83*, pp. 503-5. One of the main reasons for its confirmation was the English desire to allay the turmoil of indignation that had swept Jamaica over Dalling's displacement of four Assistant Justices in 1780. He was instructed the following year to reinstate them, but popular resentment at the Governor's power still simmered. The O.-in-C. confirming the Act is recorded in C.O. 139/40, f. 8. Bryan Edwards, writing a few years later, doubted whether the Act was of as much advantage as its framers imagined, but his judgment seems rather an under-estimate when all the facts are considered.
22. A perusal of any set of early Commissions and Instructions bears out the truth of this. See, for instance, those given to Sir Wm. Stapleton as Governor of the Leeward Islands in 1672, C.O. 1/28 and C.O. 389/4 respectively. In only one instance was the Assembly's consent made necessary to the preparation and publication of Articles of War: this occurs in the additional Instructions given to Sir Jonathan Atkins of Barbados in April, 1674 (C.O. 29/1), but the clause was revoked in the commissions and instructions given to subsequent governors.
23. For evidence on this, see C.O. 154/2, p. 150. See also a Nevis Act of 1676 confirming and making "legal" certain Articles of War which had been previously established by Gov. Stapleton in a Council of War, ibid., p. 305. Cf. also the preamble to an early Antiguan *Militia Act* of 28 Jan., 1675, ibid., p. 295.
24. Jennings, *Acts . . . of Barbados*, London, 1654, Nos. 73 and 74.
25. *Cal. S.P., Col., 1677-80*, No. 1334.
26. For a copy of this Act, see Baskett, *Acts of Jamaica*, No. 24.
27. C.O. 29/3, pp. 234-8.
28. Later Militia Acts, when compared with the earlier ones, indicate the degree to which the discretionary independence of governors and councils had become, by the end of the 18th century, almost completely destroyed. See (a) the Barbados *Militia Act*, 1697, which operated throughout the bulk of the succeeding century, Hall, *Acts*, No. 99; (b) the *Militia Act* of St. Christopher, 14 Sept., 1776, C.O. 240/12; (c) the Nevis *Militia Act*, 9 Dec., 1774, C.O. 185/9; (d) the Antiguan *Militia Act*, 1702, in *Laws of Antigua, 1668-1804*, Vol. I, No. 132, and later amending Acts recorded in the same collection; (e) the Montserrat *Militia Act* of 1752 in Montserrat *Code of Laws, 1668-1778*, No. 145; cf. also No. 203; and (f) the Jamaican *Act for explaining amending and rendering more effectual an Act entitled "an Act for settling the Militia,"* 1751, being No. 177 in *Laws of Jamaica, 1681-1769* and cf. an *Act for establishing, disciplining, and regulating the Militia*, 1783, *Laws of Jamaica, 1770-83*, No. 112.
29. Robert Byng to B. of T., 21 Feb., 1740, C.O. 28/45.
30. See Worsley's earlier testimony upon the defects of the Act (1728), C.O. 28/44, ff. 307-8. Cf. Robinson to the Assembly, 19 April, 1746, in Assembly Minutes of that date, C.O. 31/24; and Pinfold to the Assembly, 9 March, 1757, in Coun. Mins of that date, C.O. 31/28. See also an illuminating admission regarding the inadequacy of the Act and the reasons preventing its amendment, in Barbados Council Mins, 26 Oct., 1773, C.O. 31/34. Governor Hay, too, in 1778 found the Act a distinct hindrance; see Barb. Coun. Mins, 15 Sept., 1778, ibid.
31. Made up of the Governor, the members of the island Council, the regimental commanders, and any of H.M.'s naval or military commanders who might

be in Jamaica. For a copy of this Act, see Baskett's *Acts of Jamaica*. No. 24.

32. See Acts "for putting this island under martial law for any time not exceeding six (or three) months . . . " passed in 1734 and 1735, C.O. 139/14. Compare Coun. Mins of 18 and 19 May, 1745, for a similar measure passed in that year C.O. 140/31. The Governor and Council by these Acts were still acknowledged to be the correct authority to proclaim martial law, but only within the bounds set by the Acts.
33. See the annual Acts passed for this purpose from 1760 to 1783, in the C.O. 139 series vols. 21 to 38. These articles of war were generally wise enough, but they nevertheless did destroy the Governor and Council's freedom of action in altering any of them or issuing others.
34. See a copy of a most extravagant bill "for regulating, training, and disciplining the militia" passed by the Jamaican Assembly on 15 Dec., 1778, but rejected by the Council, C.O. 139/35. Compare in the same volume a measure passed by the House eight days later, which the Council accepted and which Gov. Dalling reluctantly assented to, but which was subsequently disallowed in England on 5 May, 1779. The O.-in-C. disallowing it is in C.O. 138/23, pp. 515-16.
35. See an *Act for ascertaining who shall compose future Councils of War and for subsisting the militia in time of martial law* (20 Dec., 1779), C.O. 139/37A. This measure was reluctantly assented to by Dalling and, rather strangely, not objected to in England. It thus became the pattern for this type of Act for a considerable time to come.
36. Coun. Mins of St. Christopher, 9 July, 1744, C.O. 241/5.
37. An alarm was simply a pre-arranged signal such as the firing of a gun or the blowing of horns, to signify the approach of an enemy. Upon such a signal all able-bodied men were expected to report for military duty, and in some of the islands martial law came automatically into force.
38. Evidence upon all these points may be had from a perusal of the 18th century Militia Acts already described.
39. All Crown grants were in soccage tenure. There is no record of what the rate per acre was in Lord Windsor's time, but Modyford charged 2/6 per hundred acres per year. In Sir Thos. Lynch's first government the legislature fixed the rate by Act at ½d per acre per year. Compare C.O. 138/2, p. 71, with Acts "for the speedy taking out of patents" (1672 and 1674) in C.O. 139/2, p. 53 and C.O. 139/3, p. 60 respectively. Broadly speaking, ½d an acre was the rate that obtained permanently.
40. See an *Act for the establishing of the Office of Surveyorship*, passed in Jan., 1664, and another of the same title passed the following October, C.O. 139/1, ff. 48 and 76 resp. Note, too, the Acts of 1672 and 1674 noted in the last reference.
41. For Modyford's time, see C.O. 140/2 (*Ass. Jour., I*), App., p. 24. For the 1706 figure, see the Report of a Committee of Public Accounts entered in Ass. Mins, 14 Feb., 1708, C.O. 140/8, f. 269A. For the 1709-10 figure see a copy of the Receiver-General's accounts for the year March, 1709 to March 1710, in C.O. 137/9, No. 37 (i). For the 1728 estimate see the schedule of estimates attached to the perpetual *Revenue Act* of that year, in Baskett's *Acts of Jamaica*, No. 271. For the increased receipts following the passing of the 1745 Act, see Edward Trelawny to the B. of T., 14 Nov., 1747, C.O. 137/24. Long, speaking of the returns in the early seventies, gives a figure of between £1,400 and £1,500 (Long, I, p. 61). The income from quitrents was, however, again considerably augmented after 1783 on account of an Act passed that year to facilitate their collection; see Manning, H.T., *British Colonial Government after the American Revolution*, p. 176.
42. As regards ascertaining and collecting the quitrents, see Acts of 1693 and 1703 (C.O. 139/8); 1733 (Baskett's *Acts*, No. 333); 1745 (C.O. 139/16); 1767 (C.O. 139/23); and 1783 (*Laws of Jamaica, 1770-83*, No. 113). As regards the regulating of surveyors, the Act of 1683 remained theoretically in force

throughout the succeeding century but was periodically supplemented by temporary Acts designed to bring its requirements more up-to-date.

43. The two Acts of 1664 are in C.O. 139/1, ff. 33 and 42. Cf. a later Act of 1664, ibid., ff. 66-8; and Acts of 1672 and 1674 in C.O. 139/2, ff. 119-31 and C.O. 139/3, ff. 173-92 respectively.
44. For this Act of 1683, see C.O. 139/7, f. 249. It was confirmed in England and remained on the statute book until it was repealed by a later Act in 1709.
45. For the Act of 1667, see C.O. 30/2, p. 54. This was disallowed only in 1710. For the Acts of 1668 and 1670, see Hall, *Acts*, Nos. 44 and 45. These were still on the statute book as late as 1762. The English authorities at this early period saw no objection in principle to colonial laws regulating fees. We find in the Instructions to William Lord Willoughby in 1667 a clause directing him to make inquiry into all offices and "with the advice of his respective Councils *and Assemblies* . . . to settle such offices with such fees as would be most for the ease and benefit" of the inhabitants: C.O. 29/1, p. 65.
46. This, despite the early Montserrat *Act for settling . . . the Secretary's fees and the Marshal's fees* (1668) (Baskett's *Acts of Montserrat*, No. 10); and an Antiguan *Act for establishing a Register's Office and the several fees that belong thereto* (1668), *Laws of Antigua, 1668-1804*, vol. I, No. 5. The Montserrat Act within twenty years had become ignored, *Cal. S.P., Col., 1685-88*, No. 1586. Indeed, in the Leewards the Governors and Councils freely regulated fees. For an example of this, see Antiguan Coun. Mins, 26 April, 1687, C.O. 155/1, p. 117.
47. *Laws of Antigua, 1668-1804*, vol. I, No. 94, confirmed by the Crown in 1697.
48. Antiguan Coun. Mins, 28 Jan., 1698, C.O. 155/2, pp. 243-56. Cf. also the list of Antiguan laws in C.O. 154/6.
49. Instances of the Governor and Council regulating old and establishing new fees are to be seen in C.O. 9/5, Ant. Ass. Mins, 8 Apr., 1724; C.O. 9/8, Ant. Coun. Mins, 16 Jan., 1735; C.O. 9/9, Ant. Coun. Mins, 11 Feb., 1736; and C.O. 9/13, Ant. Coun. Mins, 15 Feb., 1741.
50. B. of T. representation upon these Acts, 2 May, 1706, C.O. 153/9, pp. 242 and 269.
51. These Acts, designed to regulate the fees of the island Secretary, the Marshal, and the Justices were still operative in 1740 (Basket, *Acts of Nevis*, Nos. 67, 68 and 69), and apparently remained on the statute book throughout the whole century. On 1 Dec., 1762, an amending Act to the "Act to settle and establish the Secretary's fees" was passed to regulate the fees which he should demand for recording and copying deeds and other instruments; C.O. 185/7.
52. The only island that took early opportunity to reap benefit from the new condition of affairs was St. Christopher where in 1716 an *Act for regulating . . . the fees of the several officers and courts in this island* was passed, apparently just prior to the arrival of Governor Hamilton. This Act, besides stipulating what fees should be taken, also ordained that any further tables to be established in the island would require the concurrence of the Assembly and the countersignature of the Speaker as well as that of the President of the Council. The Act was by the B. of T. allowed to "lie by" and so remained on the statute book for a subsequent century: see *Laws of St. Christopher, 1711-1831*, No. 29.
53. There were two of these bills, to both of which Hamilton refused his assent; see his letter to the Montserrat Council recorded in Mont. Coun. Mins, 1 May, 1718, C.O. 155/5.
54. C.O. 155/7, Mont. Coun. Mins, 15 March, 1729.
55. This was Lieut. General—later Governor—William Mathew. This man did not object to the regulation of fees by law; it was he who assented to the St. Christopher Act of 1716. Governor Hart,too (1721-7) had been prepared to acquiesce in the passage of laws for this purpose; he had assented to the St. Christopher *Court Act* of 1724 which established dockets of fees to be taken

by the various court officials, and in the same year he had even advised the Montserrat legislature to pass laws for the regulation of the fees belonging to several of their public officials: see *Laws of St. Christopher, 1711-1831*, No. 59, and cf. Mont. Coun. Mins, 10 Nov., 1724, C.O. 155/6.

56. Baskett, *Acts of Nevis*, No. 94. It remained in operation throughout the century; see Nevis *Laws, 1681-1861*, (Ed. Huggins), No. 20.
57. Handasyd to B. of T., 19 Nov., 1706, C.O. 138/12, pp. 54-6.
58. An *Act for regulating fees* (1711), in Baskett's *Acts of Jamaica*, No. 166. For the O.-in-C. confirming it, 30 April, 1715, see C.O. 138/14, p. 331.
59. The royal Instruction is recorded in Coun. Mins of 28 Sept., 1764, C.O. 140/42. Lyttelton's proclamation is printed in Assembly *Journal*, *V*, p. 603.
60. This O.-in-C. directed to Lyttelton, dated 21 June, 1765, is in C.O. 137/34. Shortly afterwards two British Acts of Parliament (1765 and 1770 resp.) were passed to authorise imperial customs officials, including Naval Officers, to continue to demand such fees as had been their portion prior to the 29 Sept., 1764. Thus customs officials, too, as well as patent officers, were safeguarded in their inordinate exactions.
61. The fees of the former being systematically regulated by a series of temporary Acts from 1756 onwards (see C.O. 139 series, vols. 18 to 38); and those of the latter being partly prescribed in the various finance Acts.
62. The fees of the Governor's secretary were prescribed by law for the first time only in 1783; see Act in C.O. 139/37D.
63. See Barb. Coun. Mins, 3 Oct., to 10 Dec., 1733, C.O. 31/19. Cf. Coun. Mins, 16 April, 1735, which contain a copy of an O.-in-C. of 12 Feb., 1735, for the Act's disallowance, C.O. 31/20.
64. See the proceedings and reports laid before the Privy Council in respect of this Act, *A.P.C., Col., 1766-83*, pp. 509-11. The Act itself is recorded in C.O. 30/16.
65. An exception to this statement should be noted. In all the West Indian colonies numerous Acts, such as Militia Acts, Court Acts and Slave Control Acts, in creating new duties for public officials, frequently specified the fees that should be demanded for every such service. Thus in all the islands a certain proportion of fees came to be fixed by occasional laws. The exception, however, though important, does not militate against the substantial truth of the above statement that the bulk of fees were still based upon tables of charges regulated more by the Governors and Councils than by any other authority.
66. Prior to 1739 the B. of T. was prepared to confirm colonial laws for the regulation of Assemblies provided they did not impose too severe restrictions upon a governor's freedom. By 1739, however, experience had taught the Board that its acquiescence in such Acts was beginning to work grave disadvantages. The governors in many colonies had become far more narrowly restricted than had been foreseen, while some of the colonies by means of local Acts had so increased the membership of their Assemblies that these bodies were becoming too unwieldy. Accordingly a policy of greater caution was adopted. From that year onwards the governors of royal provinces were directed to refuse their assent to all franchise Acts save those which contained a clause suspending their operation until the will of the Crown should be made known. For the future, any Acts passed in disobedience of this Instruction were certain to be disallowed and the governor reprimanded. Moreover, even the Acts which did contain these suspending clauses were for the most part disallowed.
67. Hall, *Acts*, No. 26.
68. This Act was disallowed because the B. of T. was convinced that it had been passed contrary to the real wishes of the inhabitants, by the same Assembly which had so recently passed the much condemned *Paper Credit Act*, and which by the new electoral law merely designed to prolong its own existence

for a further period of years. *Cal. S.P., Col.*, 1706-8, Nos. 624 and 696. It was formally disallowed on 2 Jan., 1707.

69. Acts of 1676, 1691, 1692, 1697 and 1709, being Nos. 370, 491, 507, 566 and 701 resp. in the complete lists of Barbadian laws appended to the 1762 edition of Hall's *Acts*.
70. The only two exceptions to this occurred in 1699 and 1706. In the former year the B. of T. disallowed a 1698 *Act to declare . . . the rights and powers of the Assembly* on the ground that the Barbadian Assembly under its terms claimed wholly excessive privileges. This Act, recorded in C.O. 30/6, was disallowed on 18 May, 1699. In 1706 the Board had its attention drawn to the fact that the existing Barbadian *Electoral Act* (of 1697) also contained one or two claims to privileges of an "exorbitant" nature, and it directed the legislature to repeal those particular clauses on pain of having the entire Act disallowed. The islanders, anxious to retain the main provisions of the measure, did as they were bidden. Cf. *B. of T. Journal, 1704-9*, p. 236 with *Cal. S.P., Col., 1706-8*, Nos. 198, 294, 632 and 740.
71. *An Act to keep inviolate and preserve the freedom of elections*, 18 July, 1721, Hall, *Acts*, No. 148. The qualification for both elector and candidate was the possession of freehold property worth £10 current money per annum.
72. For these and other points regarding early Assemblies, see Whitson, A.M., *The Constitutional Development of Jamaica, 1660-1729*, pp. 23, 32, and 40-2. The Speakers of all the Assemblies from 1664 to 1674, inclusive, were the Governor's nominees, but in 1675 the Speaker was freely chosen by the House and continued so ever afterwards. For the 1674 *Act for ascertaining the number of Assemblymen*, see C.O. 139/3, p. 1; and for the semi-permanent Act of practically the same title confirmed by the Crown in 1683, see *Laws of Jamaica, 1681-1769*, vol. I, No. 1. Since in 1674 there were 15 parishes, the House after passing the Act consisted of 32 members. As the number of parishes increased, so did the size of the House. When in 1693 Kingston was made into a parish, an Act of Assembly gave it three representatives. By 1783 there were no fewer than 20 parishes and 43 members.
73. Not until 1776, however, did the legislature pass an actual *Act to regulate the trials of controverted elections* which laid down the parliamentary procedure to be adopted in such cases; see C.O. 139/33. This Act was in the first instance passed for only three years, but in 1779 was re-enacted for a further seven; see C.O. 139/37.
74. A copy of this 1716 *Act to secure the freedom of elections* is in C.O. 139/10. For reasons for its disallowance, see *C.S.P., Col., 1717-18*, No. 168.
75. Actually they returned to the matter very speedily indeed, for, after an abortive attempt in 1718, they passed in 1721 an *Act for qualifying members to sit in Assemblies and to regulate elections* which in due course was approved by Council and assented to by the Governor. Lawes, in a despatch to the B. of T., 28 Aug., 1721, called it "in all respects a good law" and recommended it for the royal approbation. At this point, however, all record of it vanishes and its fate is a complete mystery. Neither the B. of T. nor the Privy Council records have any mention of it, neither does Baskett in his collection of *Acts* made in 1738 even list it. The subsequent Act of 1733 does not mention it for repeal as one would have expected had it been in operation at the time the 1733 Act was passed. Did it contain a suspending clause exempting it from operation until the royal consent had become known? In view of Jamaica's rooted objection to the insertion of such clauses it is extremely unlikely that it did. Did it therefore operate between 1721 and 1733? Perhaps it did, but we cannot be sure. See Ass. Mins., 19-22 July, 1721, C.O. 140/9 (*Journal II*), pp. 381-5; and cf. Lawes to B. of T., 28 Aug., 1721, C.O. 137/14. *A.P.C., Col., 1720-45* has no mention of it.
76. Electors took the following oath. "I, A.B., . . . do swear that I am a freeholder . . . in the parish of . . . by title proved . . . in the office of enrolment three months at the least, and that my freehold consists of a tenement of the

real value of £10 per annum or a penn with six head of cattle of the like . . . value, or a plantation with five acres at the least planted . . . and that it hath not been given or granted to me fraudulently or on purpose to qualify me to give my vote in this election . . ."

Every Assemblyman, before taking his seat, had to swear to the possession of property worth either £300 per annum or £3,000 in gross value; see Baskett's *Acts*, No. 328, clauses III and IX respectively. An amending Act of 1756 increased the minimum acreage to be possessed by a voter to eight acres yielding the true value of £10 per annum, and increased the necessary period of ownership in all cases to twelve months before the day of the election. The Act of 1780 made no further alterations in these requirements except that it enfranchised those who, not being in actual occupation of estates, yet were in receipt of rent or other income of £50 per annum from any estate on which negroes were kept.

77. See an *Act to repeal two several Acts . . . and to secure the freedom of elections . . . to qualify persons elected to serve in future Assemblies, . . . and to prevent the fraudulent practice of multiplying votes at elections* (30 Dec., 1780), *Laws of Jamaica,1770-83*, No. 71.
78. The Assembly in Jan., 1664, and again in 1681, strove, though in vain, to secure a meeting at least once every year; Whitson, p. 26, n. 1 and p. 115.
79. A copy of the Act is given in C.O. 139/15. For the report of the B. of T. upon it, see *A.P.C., Col., 1745-66*, pp. 88-91. The Jamaican Act thus shared the same fate as a New York Act passed for a similar purpose in 1738 and a New Jersey Act of 1751: Dickerson, O.M., *American Colonial Government, 1696-1765*, p. 228.
80. A copy of the 1778 bill is in C.O. 139/35, and the legal adviser's opinion of it is in C.O. 137/38, f. 64. The Act of 1779 is No. 67 in *Laws of Jamaica, 1770-83*. For the Governor's despatch giving his reasons for assenting to it, see Dalling to Lord Geo. Germaine, 10 Dec., 1779, C.O. 137/76. Cf. B. of T. to Germaine, 25 May, 1781, recommending that the measure be allowed to "lie by", C.O. 137/77.
81. The only other Jamaican Electoral Act of interest is one passed in 1751 "for choosing the members of the Assembly . . . by ballot", which was disallowed in England as being "too great an innovation" to be allowed. A copy of the Act is in C.O. 139/17; cf. *A.P.C., Col., 1745-66*, p. 218.
82. For this Act, see C.O. 154/1, f. 1. By the terms of contemporary vice-regal commissions all colonial laws which remained unconfirmed by the Crown automatically lapsed after two years.
83. Act of 15 May, 1701, confirmed by the Crown the same year. Cf. C.O. 185/1, p. 24, with list of Acts given in C.O. 154/6.
84. Baskett, *Acts of Nevis*, No. 109. This Act remained on the statute book throughout the century. Not till 1792 was a further measure passed to amend it by altering a candidate's qualification to the possession of any property to the value of £40 currency per annum. By this Act of 1792 a voter's qualification was for the first time laid down: it was to be the possession of any property worth £10 currency per annum. The Act contained a suspending clause.
85. *Act for preserving the freedom of elections*, C.O. 240/2, pp. 43-8.
86. *Laws of the Island of St. Christopher, 1711-1831*, No. 71.
87. For B. of T. objections to this Act, see Alured Popple to Lord Londonderry, 17 May, 1729, recorded in Coun. Mins of St. Christopher, 4 Sept., 1729, C.O. 155/7. A later Act passed in 1768 to amend this law by reducing the quorum from fifteen to thirteen was disallowed by the Crown in accordance with its strict post-1739 policy; see B. of T. to the King, 29 May, 1771, C.O. 153/20, p. 36.
88. *Act for determining the sitting of the Assembly*, 13 June, 1702, C.O. 176/3. Cf. *Cal. S.P., Col., 1702-3*, Nos. 666 and 669 for the report of the B. of T. upon this law, and its final disallowance on 8 May, 1703.

89. But, as the B. of T. pointed out, this was quite unnecessary.
90. Mont. Coun. Mins, 28 May, 1748, to 9 Feb., 1749, give details concerning the passage of this Act, C.O. 177/6. Cf. Ass. Mins for the period in C.O. 177/7. For the form of the measure, see C.O. 176/4. The reasons for its disallowance are set forth in C.O. 163/17, p. 465. Cf. Coun. Mins, 30 March, 1753, for Agent Wilmot's account of these reasons, C.O. 177/6.
91. The Montserrat Ass. Mins of 18 July, 1761 and 24 March, 1762, show that the representatives by simple resolution of their House excluded from membership such Crown servants as the Secretary, the Provost Marshal, and the Treasurer; see C.O. 177/10. In 1788 they passed a further electoral bill to which the Gov.-in-Chief refused his assent; see Montserrat *Code of Laws, 1668-1788*, No. 241.
92. *Laws of Antigua, 1668-1804*, vol. I, No. 85.
93. For mention of this Act, see list of Antiguan laws in C.O. 154/6. Cf. *Cal. S. P., Col., 1700*, Nos. 787 and 860, for the reasons for its rejection.
94. *Cal. S. P., Col., 1708-9*, No. 245.
95. West's report to the Board of Trade, 1720, C.O. 152/13, ff. 262-3. Cf. C.O. 153/14, pp. 5 and 86.
96. The B. of T. report on this Act is in C.O. 153/19, p. 192. Cf. its disallowance by O.-in-C., 3 April, 1762, ibid., p. 195.

Chapter V

1. These Articles of Rendition are conveniently printed in Davis, N. D., *Cavaliers and Roundheads of Barbados*, pp. 250-55.
2. Atkins to the Lords of Trade, 18 Oct., 1677, *Cal. S. P., Col., 1677-80*, No. 422.
3. Barb. Coun. Mins, 22 July, 1674, C.O. 31/1.
4. Barb. Ass. Mins, 7 April, 1681, C.O. 31/2, p. 424. Cf. Coun. Mins of same date, C.O. 31/1, p. 340.
5. The fact that the export duty of 4½ per cent granted to the Crown in 1663 was never devoted to island purposes, withdrew from the control of the island executive the only permanent fund that they might otherwise have enjoyed. This made them more dependent than ever upon the recurrent aid of the Assemblies. Exactly the same was true of the 4½ per cent granted by the Leeward Islands.
6. See, for instance, Dutton's recommendation to the House, given in Ass. Mins, 20 March, 1681, C.O. 31/2, pp. 419-20. Cf. Coun. Mins, 17 May, 1681, C.O. 31/1, p. 344.
7. Ass. Mins, 27 Sept., 1704, C.O. 28/8, pp. 409-10.
8. For instance, Governor Hay in his opening speech to a new Assembly on 30 April, 1772, made no mention of the need of supplies, nor did he do so by any later message. Nevertheless on 3 June following, the Excise being nearly expired, a bill was introduced into the Assembly, quite as a matter of course and by a private member, to continue the duty for a further period: cf. Ass. Mins, 30 April, 1772, with those of 3 June following, C.O. 31/36.
9. For an instance of such an attempt to introduce a tax bill to supersede the Act of 1774, see Ass. Mins, 25 Nov., 1783, C.O. 31/43, on which day a private member, Judge Gittens, introduced such a bill, but it was later rejected by the Council. It is interesting to note that the Council kept on rejecting these measures seeking to amend the Excise of 1774, with the result that the latter was still in force at the close of the century.
10. See, for instance, how the legislature in 1691 set up a joint body of commissioners to inquire into the methods and costs of equipping an expedition which Governor Kendall had recommended should be sent to the assistance of the Leeward Islands, Ass. Mins, 12-13 May, 1691, C.O. 31/3.
11. Coun. Mins, 3 April, 1697, C.O. 31/5.
12. See Ass. Mins, 29 April and 13 May, 1746, C.O. 31/24.

13. Ass. Mins, 25 Nov., 1746, ibid.
14. Answers of the Barb. Council to a set of queries sent them by the newly established Council for Foreign Plantations, C.O. 31/1, p. 49.
15. Declaration issued by the joint governors on 7 March, 1667, recorded in Coun. Mins of that date, ibid.
16. The Council records of the Triumvirate (joint governorship by Henry Willoughby, Henry Hawley, and Samuel Barwick) and of William Lord Willoughby are too fragmentary to permit of certain conclusions.
17. *Excise Act* of 1670, C.O. 29/1, pp. 125-9.
18. Ass. Mins, 19 Feb., 1678, and 27 March following, C.O. 31/2, pp. 296-302.
19. See Assembly's jurisdiction over variable accounts, Chapter I of the text.
20 See Ass. Mins, 1674 to 1680, C.O. 31/2 *passim* and cf. Coun. Mins for the same years, C.O. 31/1.
21. Atkins to the Lords of Trade and Plantations, 14 July, 1676, C.O. 29/2, p. 73. At a later date (21 May, 1680) he confirmed the same story that "the taxes once imposed, the Barbadians order the collecting and disposing of the money". "I never concerned myself with any of the public moneys nor touched them", he wrote: *Cal. S.P., Col., 1677-80*, No. 1362. Comparing these two accounts one sees that by the term "disposing" Atkins meant the actual issuing of the money from the treasury.
22. See both the Commission and the Instructions to Sir Richard Dutton, Oct., 1680, C.O. 29/3, pp. 25 and 37 resp.
23. Dutton's address to the Assembly, recorded in Coun. Mins, 22 Dec., 1681, C.O. 31/1, p. 498.
24. The Excise of 1684, for instance, was "granted to his Majesty for the uses and purposes hereinafter expressed, that is to say, to the strengthening and defence of this island, in paying the gunners and matrosses, the rent and charge of the magazine and finishing the new one, for carrying on the fortifications, finishing repairing and furnishing them with great guns and other things necessary thereunto, and also to pay the debts arising out of the execution of any negro . . . that shall be condemned according to the law . . . and also the rent due for Fontabelle, and also for the payment of the Assembly's Clerk and Marshal . . . and . . . two thousand pounds . . . to his Excellency, Sir Richard Dutton": C.O. 31/3, p. 29.
25. See C.O. 31/1 p. 450, and cf. pp. 473-82. On Dec. 13, 1681, Dutton recommended the provision of new cannon and additional gunners, but the Assembly refused to grant these. Compare, however, an *Act for . . . the finishing of forts and fortifications*, 19 April, 1681, which they had passed earlier in the year, C.O. 30/2, pp. 156-61.
26. Compare Act of 2 April, 1667, C.O. 31/1, pp. 157-8, with the instance of Clerk Cartwright given in Coun. Mins, 17 June, 1685, ibid., p. 606. During Dutton's administration the Assembly used to address the Governor asking him to issue his warrant for the payment of such-and-such a sum due to its servants, and Dutton used to comply with the request.
27. Stede to the Assembly upon the need to continue the Excise for a further period, Coun. Mins, 23 Nov., 1686, C.O. 31/1. Cf. Gov. Crowe to the B. of T., 1 March, 1708, C.O. 28/11.
28. Sometimes, however, when public credit was at a low ebb, these adventurous mortals were very hard to find; see Russell to L. of T. and P., 24 Oct., 1694, *Cal. S.P., Col., 1693-6*, No. 1446.
29. They might have to wait a considerable time before they could cash their orders with the Treasurer; see Coun. Mins, 23 Nov., 1686, C.O. 31/1. Cf. also Worsley to Newcastle, 13 Sept., 1728, C.O. 28/44, f. 317.
30. Coun. Mins, 11 Dec., 1660, C.O. 31/1, contain mention of these commissioners for the public treasury. The first Act now discoverable which set up a committee of public accounts was passed on 22 Jan., 1667; see No. 250 of the complete list of laws given in Hall's *Acts*.
31. See an *Act appointing a Committee for settling the Public Accounts of this*

Island . . . (26 April, 1708), which remained in operation for the bulk of the 18th century; Hall, *Acts*, No. 113.

32. Ass. Mins, 18 Jan., 1774, C.O. 31/36.
33. Governor Russell to L. of T. and P., 23 March, 1695, C.O. 28/2, No. 81. Both Stede and Kendall had encountered similar opposition: cf. Ass. Mins, 13 Feb., 1690, C.O. 31/3, with Coun. Mins, 17 Dec., 1690, C.O. 31/4.
34. Even Dutton had permitted this form of address in respect of the salaries of the Assembly's servants; see C.O. 31/1, p. 606.
35. Cf. Ass. Mins, 27 Nov., 1694, C.O. 31/3; with Coun. Mins, 21 Jan., 1695, C.O. 31/4.
36. Coun. Mins 22 Feb., 1704, and 1 Nov., 1705, C.O. 31/8: and cf. Ass. Mins. of 16 Mar., and 20 Dec., 1704, C.O. 31/7.
37. In 1728, when the whole question of the issue of public money was again in dispute, Governor Worsley addressed the Board of Trade upon the matter. While conceding that the House in certain circumstances had acquired a right to examine accounts prior to payment being made, he yet asserted "But in the ordinary uses of any former Excise Act, an address was never made necessary," C.O. 28/44, p. 314, Worsley to B. of T., 13 Sept., 1728. Again, in 1732, the Council expressly declared that moneys claimed upon the foundation of appropriation clauses had always lain in the discretionary issue of the Governor and Council alone; Coun. Mins, 4 Jan., 1732, C.O. 31/19.
38. But the issue of money in respect of the more formal items of public expenditure the Assembly was content to leave, as before, to the personal discretion of the Executive.
39. This fact is proven by evidence to be found in Coun. Mins, 6 April, 1721, C.O. 31/16.
40. The residence of the Governor.
41. Ass. Mins, 21 May, 1712, C.O. 31/9.
42. For details of this dispute, see both Coun. and Ass. Mins from 15 April to 4 Dec., 1712, both in C.O.: 31/9. The first Assembly was dissolved in July: its successor met soon afterwards and finally passed the new Excise in December. For a copy of the Act, see C.O. 30/6.
43. An officer appointed to collect a duty of powder which the local legislature kept constantly levied upon all shipping that arrived in the island.
44. Worsley to B. of T., 15 March, 1728, C.O. 28/19, f. 102.
45. C.O. 28/39, No. 49, contains a copy of this bill.
46. Ass. Mins, 19 July to 27 Nov., 1728, contain details of this dispute; see C.O. 31/17 and C.O. 31/18. Cf. Coun. Mins, 7 Dec., 1731, C.O. 31/19, for that body's remarks upon the constitutional issues of the previous three years. Finally peruse papers in C.O. 28/44, ff. 251-337.
47. Worsley to Newcastle, 13 Sept., 1728, C.O. 28/44, f. 134.
48. Chapter VI of the text shows that it was the latter course that was ultimately adopted.
49. *Memoirs of Barbados*. p. 41.
50. See Governor Byng's evidence on this point, recorded in Coun. Mins, 2 Sept., 1740, C.O. 31/21. The Assembly had lost this power as a result of the dispute of 1728.
51. See Coun. Mins, 2 Sept. and 10 Dec., 1740, and 21 Jan., 1741; C.O. 31/21. It would appear that the Council was so firm that it succeeded even in abolishing the Assembly's recently won privilege of examining the Store-Storekeeper's accounts prior to payment being made.
52. Robinson to B. of T., 25 June, 1743, C.O. 28/26.
53. Compare Jordan's violent denunciation of Robinson, in Ass. Mins, 10 Feb., 1747, C.O. 31/34, with this congratulatory address to Grenville, 15 Feb., 1748, in Ass. Mins of that date, C.O. 31/26.
54. For a copy of this Act of 8 July, 1760, continuing the Excise of 1747, see C.O. 30/10.

55. *Excise Act* of 1761, Hall, *Acts*, No. 221.
56. An *Act for the better establishment of the several fortifications within this Island*, 1715, ibid., No. 129.
57. Cf. Coun. Mins of 20 July, 1773, with those of 16 Sept., 1778, both in C.O. 31/34.
58. The House desired that the "uses" of the new *Levy Act* be made the same as those of the *Excise Act* of 1761. The Council demanded that they correspond to the uses of the existing *Excise Act* of 1774. The only difference between these two acts lay in the fact that the Act of 1761 gave the Assembly a certain measure of control over fortifications expenditure while that of 1774 did not. See Coun. Mins, 4 April, 1780, C.O. 31/34; and compare the Excise of 1774 (Moore, *Acts of Barbados*, No. 23), with that of 1761 (Hall, *Acts*, No. 221). Finally see a draft of the rejected Levy Bill of 1780, given as an enclosure in Cunninghame to Lord Geo. Germaine, 22 Sept., 1780, C.O. 28/34.
59. The only revenues that still came in were the proceeds of the Liquor Excise (permanent since 1774) and the slave import tax; but both of these had diminished steadily as the century advanced, and were now totally inadequate to bear even the urgent expenses of the government: compare revenue returns of 1724 (C.O. 28/18, f. 186) with those of 1774 (given as enclosure in Hay to Dartmouth, 31 Aug., 1774, C.O. 28/55).
60. See a report addressed to the Lord President of the Council, dated 27 Aug., 1782, C.O. 28/59.
61. That this was really the case may be gauged from the appropriation terms of the various Poll Tax Acts passed from 1786 to 1794, to be found in C.O. 30/16.

Chapter VI

1. C.O. 31/1, Barbados Council Mins, 28-29 May, 1660.
2. C.O. 1/20, No. 3.
3. C.O. 31/1, p. 192. This happened during the Presidency of Christopher Codrington.
4. *Act for the speedy fortification of the marine parts of this island*, 3 Aug., 1650, C.O. 1/11.
5. For instances of such directions, see C.O. 31/2, p. 285, and C.O. 31/1, pp. 570-1. Compare a *Supplemental Act to an Act intituled an Act for the better establishment of the fortifications of this island*, 25 Jan., 1706, C.O. 30/6.
6. Opinion of Att. Gen. Trevor upon several Barbadian laws, given in a Report of 3 Sept., 1697, C.O. 29/6, p. 91.
7. *An Act for the supply of a further strength of labourers to . . . the finishing of forts and fortifications*, 19 April, 1681, C.O. 30/2, p. 156.
8. *Act for the better establishment of the several fortifications within this island*, 1715, Hall, *Acts*, No. 129. A "use" within the periodical Excise Acts supplied an almost permanent fund from which such expenses could be satisfied.
9. Lowther to B. of T., 25 Jan., 1717, C.O. 29/13, p. 364. Compare Worsley to the same, 7 April, 1729, C.O. 28/20, f. 138.
10. Robinson to B. of T., 10 May, 1744, C.O. 28/26. Compare the Board's reply to Robinson, 11 July, 1745, C.O. 29/16, p. 342.
11. Compare Grenville's address to the Assembly (C.O. 31/27, Coun. Mins, 27 Nov., 1751) with its reply to him (Coun. Mins, 14 Dec., 1751, ibid.)
12. Cf. *Cal. S.P., Col., 1677-80*, No. 1362, with Barb. Coun. Mins, 22 Jan., 1782, C.O. 31/42.
13. C.O. 31/1, p. 205. A limit was set only upon the total sum that was to be devoted to the whole expedition, otherwise the commissioners were financially unrestricted.
14. See Ass. Mins, 13 and 15 May, 1691, C.O. 31/3; also Coun. Mins for those

dates, C.O. 31/4. Compare an *Act for a levy upon mills, etc.*, passed on 13 May, 1691, C.O. 31/3.

15. A copy of this *Redoubt Act*, passed 26 July, 1779, is in C.O. 28/34. Cf. Coun. Mins, 22 and 26 July, 1779, C.O. 31/34.
16. Cf. Cunninghame to Lord Geo. Germaine, 23 Nov., 1780, C.O. 28/58, with same to same, 2 Oct., 1780, C.O. 28/34. Finally peruse the reply, B. of T. to Cunninghame, March, 1781, ibid.
17. Cf. Ass. Mins, 23 Oct., 1689, C.O. 31/3, with the Act of the same date recorded in C.O. 30/5.
18. Cf. Coun. Mins, 10 Oct., 1694, C.O. 31/3, p. 379; with an *Act for the present supply of the necessities of this island*, 1 Nov., 1694, ibid.
19. Report of the Solicitor-General upon several Barbadian Acts—including the Dowden Sloop Act—submitted to the B. of T., 12 Jan., 1698, C.O. 28/3, No. 58.
20. for details of this dispute, see Coun. Mins, 24 Nov., 1702 to 16 Feb., 1703, C.O. 31/6: and cf. Coun. Mins, 15 March, 1703, C.O. 31/8.
21. Ass. Mins, 24 and 29 April, 1745, C.O. 28/28.
22. For particulars of these two vessels, Minveille and Moll's brigantine the *King George* and Bolton's brigantine the *Prince Frederick*, see Ass. Mins, 9 and 10 Dec., 1746, and Coun. Mins, 17 and 26 Dec., 1746, all in C.O. 31/24.
23. All papers relating to this Cruiser Bill dispute, including a copy of the bill itself, are recorded in Barb. Coun. Mins, 26 Dec., 1746, C.O. 31/24.
24. See Ass. Mins, 7 Feb., 1749, 11 July, 1749, and 20 March, 1750, all in C.O. 31/26.
25. The authorities cited in the case of the *Redoubt Act* supply all particulars of this matter also: see reference 15 supra.
26. C.O. 31/2, pp. 296 and 302.
27. Cf. Coun. Mins, 16 March, 1686, C.O. 31/1; with Ass. Mins, 22-3 Feb., 19 April, and 17 May, 1687, C.O. 31/3. The Act as finally passed "concerning the cleaning of the bar at St. Michael's" is in C.O. 30/5.
28. Coun. Mins, 15 May and 9 July, 1701, C.O. 31/6.
29. For the history of this measure, see Ass. Mins, 25 Nov., and 9 Dec., 1746, and 24 Feb., and 12 May, 1747, C.O. 31/24; also Ass. Mins, 23 June and 7 Dec., 1747, and 3 March, 1748, C.O. 31/26. The Act itself is recorded in Hall, *Acts*, No. 190.
30. See Ass. Mins, 12 May, 29-30 Sept., 3 Nov., 1772, and 15 June and 6 July, 1773, all in C.O. 31/36. Cf. the text of the Act, dated 3 Aug., 1773, either in C.O. 30/13 or in Moore, *Acts*, No. XVI. Cf. additional Acts thereto, of 1773 and 1778; ibid., Nos. XVIII and XXVII.
31. See Henry Duke's allusion to it, Coun. Mins, 18 Jan., 1780, C.O. 31/39.
32. Cf. an *Act for erecting magazines . . . and building a Town Hall and Gaol*, 15 Feb., 1726, C.O. 30/9, with a later Repair Act of 1748 in Hall, *Acts*, No. 190.
33. See C.O. 30/11 for the *Act appointing commissioners to carry into execution a plan for rebuilding the town of St. Michael's*, 12 May, 1767. Cf. C.O. 30/12 for an additional Act passed on 15 May, 1770. Finally peruse Ass. Mins, 18 Jan., 1780, C.O. 31/39.
34. Coun. Mins, 15 June, 1773, contain a Report of Richard Jackson, legal counsellor to the B. of T. upon the *Molehead Act* of 1772, C.O. 31/34. This Act, though disapproved, was not rejected on account of any objection to the principle of joint-committee control.
35. B. of T. to Cunninghame, March, 1781, C.O. 28/34.
36. Ass. Mins, 18 Jan., 1780, C.O. 31/39.
37. See Duke's speech in Ass. Mins, 28 Jan., 1780, ibid. Cf. Cunninghame's allegations concerning the wastefulness of commissioner administration, made in an address to the Assembly on 5 Sept., 1780, and recorded in Coun. Mins of that date, C.O. 31/42.

Chapter VII

1. The following population figures are illuminating:—

	YEAR	WHITES	NEGROES
17th Century	1661	3,360	514
	1693	7,768	9,504
18th Century	1740	13,000	99,000
	1773	16,000	200,000

What slow development until the early 18th Century: but what rapid development thereafter on account of capitalist enterprise in the importation of more and more slaves!

2. For the story of their arbitrary early government, their being without an Assembly for six years on end (1665-71), their struggle to escape the consequences of their being a colony of conquest and gain the same constitutional rights as the older West Indian colonies of settlement, the crisis of 1677-80 when it appeared not only that their cause was going to be defeated but that the status of Ireland under Poynings' Act was going to be applied to them, and for their ultimate victory, see Whitson, A. M., *The Constitutional Development of Jamaica, 1660-1729*, Chaps. II to IV.
3. See the Assembly's indignant rejection of a tax bill sent to it by Lord Carlisle from Council on 14 Nov., 1679, C.O. 140/2 (*Journal*, I), p. 51.
4. This was by allowing the Council to hold a "free conference" with the House to consider alleged defects in a tax bill before the Council had exercised its right to amend or reject it. In 1703, however, on the Board desiring such a conference on a money-bill, the House refused to allow it, and never again was such a thing permitted.
5. The last recorded instance of a Council amendment to a money-bill being accepted by the House occurred in 1707, when Council amendments to both a Quartering Bill and an Additional Duty Bill were accepted by the House. See Coun. Mins, 30 Jan., and 5 Feb., 1707, C.O. 140/6, pp. 826 and 838. Eight years later the question of Council's right to amend money-bills came to a head over a Deficiency Bill to which the House on principle refused to accept any amendments: see Ass. Mins, 17 Dec., 1715, C.O. 140/9 (*Journal*, II).
6. The earliest tax Acts, Jan.-Oct., 1664, safeguarded their right to be fully informed of the state of the treasury; see Whitson, pp. 25-6 and 33, note 2. The Impost Acts of the early 1670s required that the treasury accounts be recorded in the Council Office for the Assembly to view; see *Impost Act* of 1674, C.O. 139/3, and of 1675, C.O. 139/4.
7. All tax Acts after 1680 contained a clause obliging the Receiver-General to account in person to the Governor, Council and Assembly, or any committee by them or any of them appointed: see Impost Acts of 1681, 1682 and 1683, in C.O. 139/7.
8. See Ass. Mins, 19-26 Feb., 1708, C.O. 140/8, ff. 284-91. Cf. *Journal*, I.
9. The periodical committees appointed to inspect and state the public accounts sometimes submitted estimates of anticipated expenditure long before the 1760s. See, for instance, such an estimate presented as early as 1711, C.O. 140/9 (*Journal*, II), p. 61. But the presentation of Estimates as a standard practice began only in 1768. For the Estimates of 1768, 1769 and 1770, see C.O. 140/46 (*Journal*, VI), pp. 166, 226 and 336. For those of 1780-82, see C.O. 140/59 (*Journal*, VII), pp. 221-4, 350-2, and 448-50. Tax arrears by 1780 customarily exceeded the large figure of £100,000; the "contingent" (i.e. regular) charges of government needing to be met out of "annual" funds exceeded £120,000 per annum, and the more variable charges ranged from £120,000 to £150,000 p. a. more.
10. Before 1677 all Jamaican bills, money-bills and others, were sent up to Council after having been passed only twice by the Assembly, but Governor

Vaughan pointed out the unparliamentary nature of this practice and persuaded the House to conform to House of Commons procedure: see Coun. Mins, 19 and 21 April, 1677, C.O. 140/3. Prior to 1675, too, it had been the custom for the Governor to sign the bills presented to him for assent in the actual presence of the Council *and Assembly*. Vaughan, however, in 1675 refused to do this, pointing out that the House had no right to be a witness of anything he did by virtue of the prerogative. The bills, he said, must be brought to him, and when he had decided which to accept, the Assembly would be called in and informed. After some demur the representatives yielded, withdrew with the Speaker while Vaughan signed the bills, and then came back to hear that he had done so: Whitson, pp. 45-6.

11. Mins of Council, 15 May, 1746, C.O. 140/31.
12. See an *Act for imposing a duty on all rum and other spirits or strong liquors retailed in this island and for applying the same to several uses*, assented to by President Ayscough, 3 May, 1735, C.O. 139/14.
13. See an *Act to oblige the several inhabitants of this island to provide themselves with a sufficient number of white people . . . or pay certain sums of money in case they shall be deficient*, assented to by President Heywood, 10 Nov., 1716. It was disallowed by Order-in-Council in England the following year on account of its commissioner clauses, but it was nevertheless the forerunner of scores of later Deficiency Acts. Earlier deficiency laws had taken the form of periodical Quartering Acts passed during the years 1702-13, by which planters who were deficient in white servants were liable to be made to billet one or more of the regular troops.
14. See *Impost Act*, Oct., 1664, C.O. 139/1, ff. 70-2.
15. The Receivership of the island taxes was first made a Crown appointment in 1674 when a patent for the office of Receiver-General of H. M.'s Revenues in Jamaica was granted to Leonard Compeare and Thomas Martin, of London, for their lives.
16. Actually it had tried as early as 1675 to return to this early 1664 practice, but had given way; Whitson, p. 57. See the two-year *Impost Act* of 1675 in C.O. 139/4, and compare the features of the 1677 Impost Bill recorded in Ass. Mins, 25 Sept., 1677, C.O. 139/1, ff. 191-2.
17. See Ass. Mins, 26 and 27 Nov., 1679, C.O. 140/2 (*Journal*, I), pp. 55-6.
18. See Impost Acts of 1681, 1682 and 1683, all in C.O. 139/7. All these Acts also allotted from £1000 to £1250 per annum to fortifications.
19. Lord Archibald Hamilton, in a letter to the B. of T. dated 19 Jan., 1712, and written soon after he landed in Jamaica, said that he had on arrival "found a treasury—if £3,000 per annum deserves that name—not only exhausted but in debt," C.O. 138/13, p. 441.
20. From 1681 onwards the Instructions to every governor had directed that public money must issue only by warrants under the Governor's signature, issued with Council's consent: see Instructions to Sir Thos. Lynch, 1681, in C.O. 138/4, pp. 17-39.
21. Th proofs of this are far too voluminous to be given in full: but to take only three books of island laws, see an *Act for raising money for and towards the defence of this island* (1693), in *Laws of Jamaica, 1684-98*, Vol. ii, p. 5; an *Act for raising money as a further aid to their Majesties towards the defence of this their island* (1693), ibid., p. 63; an *Act to reimburse their Majesties' Treasury and encourage their subjects to come and settle in this island* (1693) ibid., p. 42; an *Act appropriating several sums of money, heretofore raised, to the immediate service of this island* (1694), ibid., p. 79; an *Act appropriating the sum of £800 for the accommodation of H. M.'s forces daily expected hither* (1695), C.O. 139/9; an *Act for raising money to discharge the debts contracted in the late invasion of the French* (1695), ibid.; an *Act for completing ye payment of the debts contracted during the late invasion . . . and erecting and finishing ye fortifications at Port Morant* (1696), ibid.; an *Act for raising several sums of money to discharge the public debts and providing funds*

for the safeguard of the island (1702), ibid.; an *Act for the more effectual raising of parties to pursue and destroy rebellious and runaway slaves* (1702), ibid.; and an *Act for raising money for providing an addition to the subsistence of H. M.'s troops and soldiers* (1703), ibid. Finally see a 1711 *Act for applying the sum of £5,000 for fitting out two sloops or brigantines for the guarding of the seacoasts . . . of this island* which is very fully referred to in the *Additional Duty Act* of 1716, and an *Act to encourage the bringing over and settling of white people in this island* (1716), both of which are in C.O. 139/10.

22. See Article 97 of Lawes' Instructions, 1 Jan., 1718, C.O. 138/15, p. 416. Cf. Article 27 of Governor Dalling's Instructions, 14 April, 1778, C.O. 138/23, p.432.
23. Of this there is no doubt whatever. The annual Deficiency Acts from 1718 to 1734 invariably styled the Receiver-General by name to be "Commissioner to receive and pay" the tax proceeds. In the Additional Duty Acts and the Poll Tax Acts from 1718 to 1732 the House was content merely to vest the proceeds in the Receiver-General *in his private capacity* without actually designating him commissioner (though it was a distinction with practically no difference!) However, from 1733 onwards even these Acts adopted the commissioner form of styling him. See these Acts in the C.O. 139 series, vols. 10 to 14.
24. See Lawes to the B. of T., 31 Jan., 1719, C.O. 138/16, p. 189, wherein he points this out and declares that financial desperation alone constrained him to assent to it. A perusal of clauses in the Deficiency Acts, Additional Duty Acts, Rum Acts, and periodical Poll Tax Acts from 1718 to 1783 makes it clear that the Receiver-General's accountability for these "annual" funds was always to the House *alone*, and that no clause ever safeguarded the right which the Governor and Council, as the proper Executive, *ought* to have possessed to issue these moneys: see C.O. 139/10 to C.O. 139/37D, *passim.*
25. The legal adviser to the B. of T., Richard West, noticed the ruse and drew the Board's attention to it: see West's report, 8 July, 1719, C.O. 138/16, p. 239. The Board, however, merely directed Lawes to do his best to see "that no future Act may be liable thereto"; see B. of T. to Lawes, 27 Dec., 1720, ibid., p. 280. Lawes, however, was quite powerless to do anything, and West did not raise any further objections; see his report to the Board, 30 Oct., 1721, C.O. 137/14, p. 363. From 1733 to 1753 all annual tax Acts, including the newly instituted *Rum Act* of 1735, styled the Receiver-General as "Commissioner to receive and pay" the proceeds: see tax Acts for these years in C.O. 139/14 to C.O.. 139/17, *passim.*
26. The appropriation clauses of the Act of 1728 appropriated the proceeds "to the support of the government of this island and the contingent charges thereof and to the other uses in this Act mentioned [chief of which was £1250 p.a. to fortifications] and to no other use, intent or purpose whatsoever . . . any surplusage . . . above the sum of £8,000 . . . shall be applied to the use of parties to be raised for the reduction of rebellious negroes or to or for such uses as the Governor, Council and Assembly for the time being by any law or laws shall think proper, and to no other use, intent or purpose whatsoever." For a copy of the Act, see either Baskett's *Acts of Assembly of Jamaica* or C.O. 139/8.
27. Cf. Ass. Mins of 18, 24 and 31 Oct., 1749 (C.O. 140/33, *Journal* IV, pp. 186, 191 and 198) with Coun. Mins, 3 Dec., 1749 (C.O. 140/32). See also Trelawny to B. of T., 10 April, 1750, C.O. 137/25.
28. See *A.P.C., Col., 1745-66*, pp. 215-22, B. of T. report dated 19 July, 1753. Actually Knowles, already in Jamaica, had by then consented to one such bill.
29. These were the Resolutions (one about their exclusive right of supply and disposal, and the other six about their objection to inserting suspending clauses in the island bills) which were later brought to the notice of the House of Commons which condemned them out of hand, saying of the supply resolution:—

(a) that the Assembly's "resolution . . . so far as the same imports a claim of right in the said Assembly to raise and apply public money without the consent of the Governor and Council, is illegal, repugnant to the terms of H.M.'s commission to the Governor of the said island, and derogatory to the rights of the Crown and people of Great Britain, and

(b) that the claim . . . of a right in the Assembly to appoint such person or persons for the receiving and issuing of public money as the Assembly shall think proper, is illegal, repugnant to the terms of H.M.'s commission . . . and derogatory of the rights of the Crown of Great Britain". Commons *Journals*, 3 May, 1757.

30. Both passed on 31 Oct., 1754, and recorded in C.O. 139/18.
31. A further blow to the representatives' zeal for the commissioner system in finance was the fact that Benjamin Hume, the very man for whose sake they had embarked upon the conflict in 1749, ultimately proved very untrustworthy, being unable to account in 1753 for over £19,000! The House had to ask Knowles to suspend him from office and threatened to sue him for the money, but Hume, possessing considerable estate, saved himself the humiliation of a court case by selling a good deal of his property to refund it.
32. Proof of this is too voluminous to give in full, but may be amply seen from a perusal of the annual Tax Acts from 1756 to 1783, recorded in the C.O. 139 series. For a few good specimens, see the 1755 *Deficiency Act*, C.O. 139/18; the 1759 *Deficiency Act*, C.O. 139/20; and the 1782 *Rum Act*, *Additional Duty Act*, and *Poll Tax Act*, all in C.O. 139/37D.
33. See Instructions to Gov. Archibald Campbell, 31 Aug., 1782, C.O. 138/25.
34. Or a few hundreds more if parties had recently been sent out against rebellious negroes, for this was a "use" in the Act additional to the £8,000 limit.
35. See Ass. Mins of that day, C.O. 140/40 (*Journal*, V), p. 99. Cf. Coun. Mins, 14 Dec., 1775, C.O. 140/55 for further points; also Ass. Mins, 19 Dec., 1778, C.O. 140/59 (*Journal*, VII), p. 125. Remember, too, how the Assembly had refused to reimburse Lord Archibald Hamilton his unparliamentary expenditure in 1714-15; or to reimburse the imperial treasury for the bills drawn on it by Governor Lyttelton for his unparliamentary expenditure.
36. C.O. 140/59 (*Journal*, VII), pp. 221-4, 350-2 and 448-50. Cf. Long, *History of Jamaica*, I, pp. 67-8.
37. Evidence is again too bulky to be given in full, but for a specimen year, 1782, compare the "uses" in the annual tax Acts of that year, given in C.O. 139/37D, with the Estimates and other financial proceedings for the same year given in C.O. 140/59 (*Journal*, VII), pp. 448-582 *passim*.
38. The Impost Acts of 1674 and 1675 obliged the Treasurer every six months "to render an account unto the Governor and Council here, who are to record the same in the Council Book, to the end the same may be seen by the General Assembly". See Impost Acts of these years in C.O. 139/3 and C.O. 139/4 resp. Council records of the time show quite clearly that this recording of the treasury accounts in the Council office was definitely done; for an instance see Coun. Mins, 26 Sept., 1674, and 12 May, 1675, both in C.O. 140/3.
39. Ass. Mins, 21 Nov., 1679, C.O. 140/2 (*Journal*, I), p. 55.
40. See Ass. Mins, 21 Aug., 1679, C.O. 139/1, f. 217; and Ass. Mins, 21 Nov., 1679, 22 Sept., 1682, and 3 June, 1686, C.O. 140/2 (*Journal*, I), pp. 55, 60 and 83 for specimen cases.
41. For a typical example, see Ass. Mins, 29 Sept., to 4 Oct., 1698, ibid., pp. 175-6.
42. The earliest Acts obliged the commissioners "to render a just and true account" of their disbursements "unto the . . . Commander-in-Chief and Council . . . and in like manner to the Assembly": see 1693 *Act for raising money for and towards the defence of this island*, in *Laws of Jamaica, 1684-98*, vol. II, p. 5. But after 1702 the annual tax Acts were so framed that the person or persons authorised to receive their proceeds was (were) made

accountable to the Assembly alone: for the Act of 1703 which was the first to do this, see the *Additional Subsistence Act* of June, 1703, in C.O. 139/9. The same provision remained unchanged in all the annual Acts right down to the end of our period.

43. For the earliest instances of this regular practice, see (1718) C.O. 140/9 (*Journal*, II), p. 258; (1719) ibid, p. 300; (1720) ibid., pp. 352 and 368; and (1721) ibid., p. 390.
44. For typical Acts, see a 1696 *Act to enable several parishes to levy and collect ye arrearages*, etc., C.O. 139/9; and a 1707 *Act for the speedy collection of outstanding debts*, ibid. See also a far more full-bodied Act of 1729 which set up commissioners (two Assemblymen and one other) for each parish to get in arrears: this is recorded in C.O. 139/12.
45. An *Act for raising several sums of money . . . and to appoint a Committee to settle the Public Accounts during the continuance of this Act* (1732), C.O. 139/13. This standing committee was continued by Acts regularly passed from this time onwards.
46. See an *Act appointing Commissioners to settle the Public Accounts and to look into the state of, and count the cash in, the Treasury . . .* (1774), in *Laws of Jamaica, 1770-83*, No. 25.
47. C.O. 139/1, f. 20.
48. The office of Receiver-General was not entirely new to Jamaica where for several years the collector of the "King's" revenue from quitrents, fines and escheats had been known by that name to distinguish him from the collectors of the impost, or regular local revenue: see a commission from Sir Thos. Lynch to Thos. Tothill to be Receiver-General, dated 14 July, 1671, which, together with Tothill's instructions, is printed in Assembly *Journal*, I, Appendix, pp. 32-33. Cf. the *Liquor Impost Act* of 1674 for further mention of this officer, C.O. 139/10, p. 10. Martin and Compeare's patent was dated April, 1674, *Cal. S.P., Col., 1669-74*, No. 1260.
49. See reference, No. 16 supra.
50. This Speaker's warrant, dated 21 Aug., 1679, is recorded in Ass. Mins of that day, C.O. 139/1, f. 217.
51. Ass. Mins, 22 Aug., 1679, ibid.
52. Beeston to Assembly, 15 July, 1701, C.O. 140/2 (*Journal*, I), p. 219. For other papers in this dispute see Ass. Mins, 28 June to 24 July, 1701, ibid., pp. 210-22, *passim*; and cf. Coun. Mins, 15 July, 1701, C.O. 140/6, p. 382.
53. Cf. Coun. Mins, 13 Jan., 1703 C.O. 140/6, p. 417, with Ass. Mins, 15-18 Nov., 1704, C.O. 140/2 (*Journal*, I), pp. 356-7.
54. For illustrations, see Ass. Mins of 8 Aug., 1718, C.O. 140/9 (*Journal*, II), p. 258; also of 21 Oct., 1719, ibid., pp. 300-2.
55. See Ass. Mins, 6 Feb., 1723, ibid., p. 460; also examples in 1731 and 1734, C.O. 140/23 (*Journal*, III), pp. 4 and 223.
56. The evidence is too voluminous to be given in full, but see Ass. Mins, 1731 to 1783, *Journals* III to VII inclusive.
57. For both Council and Assembly resolutions, see C.O. 140/46 (*Journal*, VI), p. 237.
58. The above account is brief and somewhat simplified. The main points in it have been taken from J.W. Herbert's unpublished thesis (in the University of London Library) entitled *Constitutional Struggles in Jamaica, 1748-1776*, and from Manning, H. T., *British Colonial Government after the American Revolution*, (Yale Univ. Press), p. 176.

Chapter VIII

1. Compare two Acts of 1693, an *Act raising money for and towards the defence of this island*, and an *Act for raising money as a further aid . . . towards the defence of . . . Jamaica*, both recorded in *Laws of Jamaica, 1684-98*, vol. II,

pp. 5 and 63 resp. See also Beeston to the Assembly, 8 Oct., and 4 Nov., 1693, C.O. 137/3, ff. 77 and 96.

2. For the abortive undertaking of 1710 see Ass. Mins, 1 March to 9 May, 1711, C.O. 140/9 (*Journal*, II), pp. 1-25 *passim*. For the subsequent steps taken in 1711, see Ass. Mins, 3 to 19 May, 1711, ibid., pp. 24-31.
3. See an *Act for fitting out sloops or other vessels for guarding the sea-coasts and better defence of this island*, 5 Nov., 1720, C.O.139/10.
4. See further Sloop Acts of 1721 and 1722 in C.O. 139/10, and one of 1723 in C.O. 139/11.
5. See, as a specimen, an *Act for providing and maintaining a sloop . . . for the better guarding . . . the sea-coasts of this island*, 22 Dec., 1756, C.O. 139/18.
6. Every year or two, at least.
7. Records are few and far between. Such a committee in 1679 was set up at Council's request; Ass. Mins, 22-25 Sept., 1679, C.O. 139/1, ff. 217-18. In 1686, however, it was set up at the Assembly's request; see Ass. Mins, 4-9 June, 1686, C.O. 140/2 (*Journal*, I), pp. 83-5; and cf. Coun. Mins, 4-10 June, 1686, C.O. 140/4, ff. 115-16.
8. It even appears that in 1704 some committees of the House alone were allowed to view some of the outlying forts and report their condition to the House see Ass. Mins, 3 June to 16 Nov., 1704, C.O. 140/7, pp. 249-77 *passim*.
9. Ass. Mins, 11-15 Dec., 1713, C.O. 140/9 (*Journal*, II), pp. 110-11.
10. Ass. Mins, 15 Dec., 1713, ibid., p. 112.
11. See the report of this combined committee in Ass. Mins., 23 Dec., 1713, ibid., p. 115, and the address to the Governor for him to instruct the Captain of the forts, ibid., p. 116.
12. Ass. Mins, 7-9 Dec., 1715, ibid., pp. 156-60.
13. For points on this 1721 dispute, see Ass. Mins, 15-17 Feb., 1721, ibid, pp. 356-8.
14. This may at first appear to have been superfluous in view of the later practice of actually *managing* the fortifications by commissioners drawn from the whole legislature, but the Houses apparently did not so regard it. It is similar in principle to the employment of two quite separate committees to deal with the public accounts (a) a standing committee actually to adjust and manage them, and (b) a sessional committee to make formal report on them. So the standing commissioners actually managed the forts in later years, while the combined committee from time to time formally inspected them and reported to the Houses on their condition.
15. See Address of Council and Assembly to Governor Trelawny, 29 May, 1742, in C.O. 140/23 (*Journal*, III), p. 610.
16. See Trelawny's reply, 3 June, 1742, ibid., p. 613; and the Council order to the Receiver-General, 17 Aug., 1742, in Coun. Mins of that day, C.O. 140/31.
17. For the antecedents to the Act, see Coun. Mins, 7 April to 20 May, 1743, in C.O. 140/31. Cf. Ass. Min;, 25-28 May, 1743, in C.O. 140/23 (*Journal*, III), pp. 635-9. A copy of the Act entitled an *Act for appropriating the sum of £10,000 for the use of fortifications and . . . appointing Commissioners for ordering and inspecting the works . . . in and about the same* (1743) is in C.O. 139/16. This Act was to remain in operation two years and from them on to the next session of the Assembly. In the Additional Duty Acts of 1744 and 1745 two more Councillors and a few more Assemblymen were added to the Commissioners: see these Acts, ibid.
18. The Act has Mr Fane's "No objection" endorsed on it. Francis Fane strikes one as being either one of the sleepiest, or else one of the most neglectful of all the legal advisers of the Board. He seldom found any objection in any of the piles of Acts sent to him.
19. He had been Acting-Engineer of the Island for some time in the mid-thirties; see the record of his appointment by Gov. Hunter to this position, in Coun. Mins, 23 Feb., 1734, C.O. 140/25, and cf. CO. 140/23 (*Journal*, III), p. 230.

After assuming the Governorship in 1752 Knowles propounded to the B. of T. a scheme for an entirely new constitution for the island, consisting of a greatly increased Legislative Council, and, in addition, a small Executive Council drawn mainly from the Legislative Council but including the Speaker of the lower House and one other of its members. He considered that this form of government would add strength to the administration, and indeed the idea had some merits. But the B. of T. would have none of it, reminding Knowles that it was his duty to administer the existing form of government, not devise new ones. See Knowles to B. of T. 18 Nov., 1752, C.O. 137/25; and the Board's reply, 16 May, 1753, ibid.

20. See an *Act for appropriating and applying several sums of money to the use of the fortifications at Mosquito Point and Rock Fort*, 25 Nov., 1753, C.O. 139/17; also an *Act for making good several sums of money expended on carrying on the fortifications . . . and for appropriating several further sums of money to the use of the same*, 7 May, 1755, C.O. 139/18. In both of these the control of fortifications was reserved to the Governor. There is no record during Knowles's time of any Commissioners of Fortifications being in existence.
21. See an *Act for appointing Commissioners for ordering and inspecting the . . . forts and fortifications of this Island*, a 5-year Act passed on 22 Nov., 1758, C.O. 139/19.
22. See an *Act for appointing Commissioners for . . . the forts and fortifications* passed by Lyttelton, 30 Dec., 1763, C.O. 139/22. This was a 5-year Act.
23. For the Act of 1768, see C.O. 139/23; for that of 1775, see C.O. 139/31; and for that of 1778, see C.O. 139/35.
24. See an *Act to repeal two several Acts of this island . . . and for appointing Commissioners of Forts, Fortifications and Public Buildings*, assented to on 23 Dec., 1769, by Sir Wm. Trelawny, C.O. 139/24.
25. It is certain that the governors no longer exercised any preponderant influence within the Commissioners of Fortifications and Public Buildings. Indeed, for a limited time during the crisis of wartime events in 1779 the Act was temporarily altered so as to free the Governor from all necessity to attend, and to allow the rest of the Commissioners complete authority to carry on without him; see an *Act for completing, finishing and repairing the works now carrying on for the defence of this island*, 18 Sept., 1779, C.O. 139/36. Moreover, a scrutiny of Jamaican Council Minutes from 1774 onwards reveals the great extent to which the control of fortifications and public buildings had passed from the hands of the Governor and Council into those of the Commissioners. It is also clear from the correspondence of the later governors that the conduct of the fortifications was in many ways defective despite the expenditure of large sums upon them, and that they were powerless to apply a remedy: see Dalling to Lord Geo. Germaine, 27 Feb., 1779, C.O. 137/74; and Campbell to the same, 8 Jan., 1782, C.O. 137/82. Finally, the surviving minutes of two of the meetings of the Commissioners show that the Governor exercised no preponderant influence: see Mins of the Commissioners, 18 Sept., 1779, and 21 July, 1780, C.O. 137/80, ff. 64-5.
26. Dalling to Lord Geo. Germaine, 27 Feb., 1779, C.O. 137/74: cf. Campbell to the same, 8 Jan., 1782, C.O. 137/82.
27. Dalling to Germaine, 27 Feb., 1779, C.O. 137/74.
28. Same to same, 26 Sept., 1781, C.O. 137/81.
29. See instructions to the Commissioners given by the House, 12 Jan., 1781, C.O. 140/59 (*Journal*, VII), p. 349; and cf. Ass. Mins of 10 Jan. preceding, ibid., p. 346.
30. Compare the terms of two Acts, one a 1693 *Act for raising money for and towards the defence of this island, Laws of Jamaica, 1684-98*, vol. II, p. 5; and the other a 1702 *Act for the more effectual raising parties to pursue rebellious and runaway slaves*, C.O. 139/9. Notice how commissioners paid the bills and wages while the Governor and Council still retained the right of direction.

31. See an *Act for the encouragement of voluntary parties to suppress rebellious and runaway slaves*, passed in 1717: *Laws of Jamaica, 1681-1769*, I, No. 66.
32. See an *Act for the more effectual suppressing of rebellious and runaway slaves*, etc., (1724), C.O. 139/11, No. 23. Cf. an Act of practically the same title passed 29 Jan., 1726, and recorded in the same volume.
33. See an *Act for the better suppressing and reducing the rebellious and runaway slaves*, passed 28 March, 1730, C.O. 139/12. Cf. the continuing Act of 1731 in C.O. 139/13.
34. See an *Act for raising of several parties to reduce the rebellious negroes in the North-East part of this island*, 3 Feb., 1732, ibid. Cf. Gov. Hunter to the B. of T., 1 June, 1732, in which he gives his opinion of Peters, C.O. 137/20, f. 71.
35. Council to Assembly, 25 May, 1733, C.O. 137/20, f. 137. Cf. Ass. Mins, 22 March to 26 May, 1733, C.O. 140/23 (*Journal*, III), pp. 118-72, *passim*. For points on the contents of the objectionable bill, see C.O. 137/20, ff. 171-2.
36. See an *Act for the speedy fitting out of a party or parties to suppress the rebellious negroes . . . in the North-East part of the island*, 12 July, 1733, C.O. 139/13, No. 59.
37. See an *Act for the raising and fitting out of parties for suppressing the present or any future rebellion in this island*, 13 Oct., 1760, C.O. 139/21. This Act, originally passed for a year, became a hardy annual persisting to the end of our period and beyond.
38. Compare the *Quartering Act* of 16 June, 1703, C.O. 139/9, with that of 13 June, 1704, ibid. See also the Ass. Mins of 4 May, 1704, C.O. 140/7, p. 212.
39. For a selection of Barrack Acts, see an *Act for dividing this island into two divisions . . . and building barracks in the Western Division*, etc., 1733, Baskett's *Acts of Assembly of Jamaica*, No. 336; an *Act for cutting of roads and building barracks in the Eastern Division*, etc., 1734, C.O. 139/14; an *Act for the more speedy cutting roads and building barracks in the Eastern Division*, etc., Aug., 1734, ibid; an *Act for the better settling and securing the island*, etc., 1735, ibid.; an *Act to enable the inhabitants of the parish of St. Anne to build a barracks at the head of Rio Bueno*, 1737, *Laws of Jamaica, 1681-1769*, I, No. 114; an *Act for the building and completing of barracks and fortresses . . . and appointing commissioners for the better effecting the same*, 1738, C.O. 139/15; and an *Act for vesting a number of negroes in the Crown for the use of barracks*, 1739, *Laws of Jamaica, 1681-1769*, I, No. 123.
40. See, for instance, an *Act to oblige the justices and vestrymen of several parishes in this island to build, repair and keep in repair barracks, magazines, and arsenals in their respective parishes, 1760*, *Laws of Jamaica, 1681-1769*, II No. 21.
41. See the case of five Assemblymen being appointed commissioners in an *Act for the building of a guard-house and barrack in the town of Kingston*, 1749, ibid., I, No. 164.
42. C.O. 140/4, f. 163. The "late patentee for the Marshal's place" was Sir Thomas Lynch who had died in August, 1684, after having had the patent ever since 1661.
43. See Ass. Mins, 26 Sept., 1677, C.O. 139/1, f. 192, and note also Governor Handasyd's speech to a newly elected House on 5 Sept., 1706, C.O. 140/7, p. 491.
44. See Ass. Mins, 12 March to 9 June, 1731, C.O. 140/9 (*Journal*, II), pp. 699-704, and C.O. 140/23 (*Journal*, III), p. 13. Compare Coun. Mins, 5 and 25 April, 1732, C.O. 140/25. Money was appropriated to the work by means of a "tack" inserted in an *Act to continue part of an Act entitled "an Act for the the better suppressing and reducing the rebellious and runaway negroes"*, 8 July, 1731, C.O. 139/13.
45. See an *Act for rendering the Bath in the parish of St. Thomas in the East more serviceable*, 1731, *Laws of Jamaica, 1681-1769*, I, No. 94. Cf. further Acts of 1744 and 1749 adding more commissioners, ibid., Nos. 139 and 160.
46. This was presumably the deserted House of Assembly that still stands in the

Square at Spanish Town. Though the Act authorising its erection was passed in 1744, work does not seem to have started on it until at least 1748, The original Act is No. 137 in *Laws of Jamaica, 1681-1769*, vol. I. Compare mention in Mins of Council in Assembly, 13 Aug., 1748 (C.O. 140/32) of a further Act of 1748 authorising the Commissioners "to purchase lands and tenements adjoining the Parade in St. Iago de la Vega for the use of the said edifice". This Act is no longer traceable in the P.R.O.

47. See an Act for appointing new Commissioners in C.O. 139/20. The new Commissioners numbered three Councillors and twenty-one Assemblymen, and they were given powers identical with those given by the Act of 1744.
48. See the Act in question, *Laws of Jamaica, 1681-1769*, vol. II, No. 14.
49. I have not been able to find the Act authorising this, but its title is given and its leading features indicated in a later Act entitled an *Act to explain, amend and render more effectual an Act . . . for providing certain lands and premises . . . for the use of the Governor*, 1772, C.O. 139/27.
50. For the Naval Commander-in-Chief's residence, see *Laws of Jamaica, 1770-1783*. No. 18 (1773): for the Hospital, ibid., No. 55 (1776): and for the Workhouse, see the *Workhouse Act* (1777) in C.O. 139/34.
51. For the Act of 1769, see C.O. 139/24; and for that of 1778, see C.O. 139/35. It must be remembered that the term "Public Buildings" as used in the Act signified only the Assembly House, the King's House, the Supreme Court, and one or two other edifices, but there was every likelihood with the passing years that the jurisdiction of the Board by direction of the Assembly would gradually increase until quite a variety of public buildings would come under it.
52. For Commissioner Acts passed in connection with these three roads, see respectively Baskett's *Acts*, Nos 124 (1705) and 232 (1722); and *Laws of Jamaica, 1681-1769*, vol. I, No. 151 (1747).
53. For examples of such turnpike Acts, see an *Act for vesting in trustees a toll to keep the ferry and erect a . . . turnpike between St. Catherine and St. Andrew*, 1758, C.O. 139/19; an *Act for making a turnpike road from . . . Graham's to the King's highway leading through Bodle's Penn to Old Harbour*, 1760, C.O. 139/21; an *Act for amending . . . the road from St. Iago de la Vega . . . to St. Iago Plantation in the parish of Clarendon*, 1780, *Laws of Jamaica, 1770-83*, No. 77; an *Act for amending . . . the road leading from Joseph Price's Gate in the parish of St. Ann over Mount Diablo to the Rio Magno Valley in St. Thomas in the Vale*, 1780, ibid., No. 72; an *Act for altering, amending and keeping in repair the road leading from Kingston . . . to the Harbour of Manchioneal*, 1781, ibid., No. 90; and an *Act for amending . . . the road leading from Pepper Plantation in . . . St. Elizabeth to Savanna la Mar*, 1781, C.O. 139/37C.
54. Recorded in Ass. Mins, 16 Dec., 1776, C.O. 140/46 (*Journal*, VI), p. 689. Grants for roads were sanctioned by suitable appropriation clauses inserted in the tax Acts, which appropriations were sufficient authority for the Receiver-General to issue the moneys specified.
55. Ass. Mins, 19 Dec., 1781, C.O. 140/59 (*Journal*, VII), p. 56.
56. See either Baskett's *Acts*, No. 253, or *Laws of Jamaica, 1681-1769*, vol. I, No. 81.
57. For Acts governing the Bridge and Kingston Highway scheme, see *Laws of Jamaica, 1681-1769*, vol. II, No. 51, and *Laws of Jamaica, 1770-83*, Nos. 35, 43 and 49 resp.
58. After the earthquake the Lieut. Governor and Council decided to lay out a new settlement across the harbour to be named Kingston. An area of 200 acres for this purpose was bought from Sir Wm. Beeston (soon afterwards appointed Lieut. Governor) for £1,000 and the homeless from Port Royal were encouraged to remove there, one regulation for those taking up sections being that "the purchaser be obliged to build within three years a house worth £50 on forfeiture of a like sum", C.O. 140/5, p. 196. The Lieut.

Governor and Council had the advantage of the assistance of Col. Lilly, one of H.M.'s engineers in laying out the town and harbour: for mention of Lilly's plan, see Coun. Mins, 13 Feb., 1703, C.O. 140/6, p. 440. After the great fire of January, 1703, the legislature in dismay passed two Acts, one to prevent the resettling of Port Royal, and the other to declare Kingston the chief port of entry. Both were regarded in England as being too drastic and were subsequently disallowed. Despite this, Kingston forged ahead and was soon the main seat of trade. For copies of these Acts, see C.O. 139/9, and for notice of their disallowance see Coun. Mins, 9 May, 1704, C.O. 140/6, p. 212, or *Cal. S.P., Col., 1704-5*, No. 63.

59. An *Act for keeping in repair the Harbour at Kingston, and for regulating the mooring of ships in the said Harbour*, (1744), C.O. 139/16. The trustees were themselves empowered to appoint substitutes for such of their number as should die or resign.
60. See Kingston Harbour Acts of 1760, C.O. 139/21; of 1769, *Laws of Jamaica, 1681-1769*, vol. II, No. 73; of 1775 and 1778, C.O. 139/31 and C.O. 139/38 respectively; and of 1783, *Laws of Jamaica, 1770-83*, No. 110. From 1775, therefore, the justices and vestry of Kingston did duty as a Harbour Board in addition to their ordinary duties. The appointment of the water-bailiff, however, was still retained in the Governor's hands.
61. See an *Act to reimburse their Majesties' treasury, and encourage their subjects to come and settle in this island*, 1693, *Laws of Jamaica, 1684-98*, II, p. 42.
62. An *Act to encourage the bringing over and settling of white people in this island*, 1716, C.O. 139/10. For the O.-in-C., dated 23 Oct., 1717, disallowing this Act, see *Cal. S.P., Col., Aug., 1717-Dec., 1718*, No. 168.
63. See an *Act to encourage the settling the North-East part of this island*, 1721, and two subsequent Acts of 1722 and 1723, *Laws of Jamaica, 1681-1769*, I, Nos. 68, 75 and 78 respectively.
64. Within twelve months he had to settle a white man (presumably himself) plus two negroes for every 100 acres. Every year he had to increase the number of persons by at least two negroes for every 100 acres, plus an occasional white man; until by the end of five years he had settled one white man plus ten negroes for each 100 acres. If he failed to do this, he had to forfeit a part of his grant proportionable to the number deficient: see *An explanatory Act for the further encouraging the settling the parish of Portland*, 1726, C.O. 139/11.
65. See an *Act for introducing white people into this island*, etc., 1736, and an *Act for effectually settling the parish of Portland*, 1737, *Laws of Jamaica, 1681-1769*, I, Nos. 107 and 116 resp. Cf. an amending Act to the former (1747), ibid., No. 149.
66. Return by Trelawny to the B. of T. in 1741, given in C.O. 137/23. In the same return the negro population is estimated at 100,000.
67. The original Act is No. 157 in vol. I of *Laws of Jamaica, 1681-1769*; and the repealing Act is No. 11 in vol. II, ibid. I am not sure how many families were introduced, but a figure given in 1752 gave 102 families and 15 tradesmen for the three years to that date.
68. Ibid., vol. I, No. 46. This was still on the statute book, in whole or in part, until its repeal in 1781, but it is uncertain how long it remained in effective operation.

Chapter IX

1. This was true of all the islands, see:—
   (a) ST. CHRISTOPHER: Ass. Mins, 17 Sept., 1718, C.O. 155/5; and Coun. Mins, 10 Sept., 1718, C.O. 241/2.
   (b) NEVIS: Coun. Mins, 4 Sept., 1695, C.O. 155/1.
   (c) MONTSERRAT: Coun. Mins, 14 March, 1699, C.O. 155/2.
   (d) ANTIGUA: Coun. Mins, 13 Oct., 1693, ibid., p. 65.

2. Compare Mins of Coun. and Ass. of St. Christopher, 21 Aug., 1679, C.O. 1/28, No. 69, with Nevis Coun. Mins, 20 Nov., 1688, C.O. 155/1, p. 189.
3. Compare the following:—Mont. Coun. Mins, 17 Nov., 1727, C.O. 155/7; Antiguan *Tax Act* of 24 June, 1711, C.O. 8/3, f. 183; and Antiguan *Act for the better . . . defending this island*, passed on 27 Nov., 1740, C.O. 8/8.
4. Nevis Ass. Mins, 2 Aug., 1697, C.O. 155/2.
5. Parke to B. of T., 25 March, 1710, C.O. 152/11. Cf. also an instance where the Antiguan Council refused to allow payment for a service which the Assembly had presumed to authorise, Ant. Coun. Mins, 17 Nov. and 18 Dec., 1712, C.O. 9/2.
6. Antiguan Ass. Mins, 24 June, 1711, C.O. 9/2.
7. Compare:—
   (a) Antiguan *Tax Act*, 10 Sept., 1668, C.O. 154/2, p. 270; with that of 24 June, 1711, C.O. 9/2.
   (b) Nevis *Tax Act*, 24 March, 1688, C.O. 155/1, p. 167; with that of 10 March, 1701, C.O. 185/3, f. 23.
   (c) Montserrat *Tax Act*, 24 Feb., 1673, C.O. 154/1, f. 88; with that of 20 May, 1697, C.O. 176/3, f. 13: and finally
   (d) St. Christopher *Tax Act*, 7 June, 1672, C.O. 154/1, f. 97; with that of 5 June, 1704, C.O. 240/1, f. 21. The *Poll Tax Act* of St. Christopher, 29 Nov., 1711, C.O. 240/2, pp. 21-3, passed soon after the disallowance of their *Treasury Act* of 1704, was the first Act from any of the islands to contain specific and detailed appropriation terms.
8. There is one important exception to this, but it in no way mars the general rule. In each island there was a liquor import duty, renewed from time to time, the proceeds of which were applied to the cost of fortifications. This tax brought in a more or less continuous revenue from which accounts relating to work done at the forts could usually be paid almost as soon as they came to hand: see Nevis *Liquor Impost Act*, 18 Sept., 1680 (C.O. 1/45, No. 78), which is a good example of such Acts.
9. See, for example, the Nevis *Tax Act* of 1688, C.O. 155/1, p. 167. Compare St. Christopher Tax Acts of 1674, 1676, and 1677, C.O. 154/2. Also compare the Antiguan practice in 1699 given in C.O. 155/2, p. 234, with that of Montserrat in 1696, ibid., 516. Abundant evidence in the records of all the islands exists to prove this fact. Tax Act after tax Act of the various islands indicated in its preamble that the reason for the new tax was the need to extinguish the volume of existing debt.
10. For evidence upon the function of the joint committee of public accounts in these three islands, see (a) Mins of Coun. and Ass. of Montserrat, 10 Aug., 1693, C.O. 155/1, p. 320; and cf. Mont. Coun. Mins, 4 April, 1741, C.O. 177/3. (b) Nevis Coun. Mins, 21 Sept., 1695, C.O. 155/1, p. 302. (c) St. Christopher Coun. Mins, 8 June, 1683, C.O. 1/51, No. 98: cf. Coun. Mins, 17 Oct., 1707, C.O. 241/1.
11. For evidence upon the Antiguan method of adjusting public accounts, 1690-1700 see C.O. 155/2 *passim*, particularly pp. 5 and 213. Note the preliminaries to the raising of the Poll Tax in 1699, ibid., p. 332.
12. Cf. Ass. Mins of St. Christopher, 6 March, 1718, C.O. 155/5, with Ass. Mins of Antigua, 18 Feb., 1719, C.O. 9/4.
13. Nevis Coun. Mins, 20 July, 1724, C.O. 186/1.
14. Cf. Mont. Ass. Mins, 24 May, 1745, C.O. 177/4, with those of 8 May, 1746, C.O. 177/7.
15. See (a) Nevis Coun. Mins, 18 July, 1769, C.O. 186/7. (b) Antiguan Ass. Mins and Coun. Mins, for 11 March to 9 May, 1728, C.O. 9/6. Note also Ass. Mins, 20 Sept., 1728, ibid. (c) St. Christopher Coun. Mins, 24 July, 1739, C.O. 241/4.
16. Cf. Mont. Coun. Mins, 1 April, 1772, C.O. 177/11, with Mont. Ass. Mins, 18 June, 1772, C.O. 177/12.
17. See Mont. Ass. Mins, 13 Dec., 1707, C.O. 177/1, for an example of the

House making the initial suggestion that the existing Liquor Excise be continued for a further period. Compare Antiguan Coun. Mins, 16 Dec., 1699, C.O. 155/2, for an identical situation in that island.

18. Mont. Coun. Mins, 1 April, 1718, C.O. 155/5. Five years later a parallel situation arose, the Council again refusing to concur in raising a tax which the Assembly had suggested: see Coun. Mins of 20 March, 1723, C.O. 155/6.
19. For points concerning the raising of this Poll Tax of 1699, see C.O. 155/2, pp. 332-6.
20. Mont. Coun. Mins, 8 and 13 Feb., 1735, C.O. 177/2.
21. This is not literally quite true. A temporary exception did arise in the case both of Antigua and St. Christopher, during the regimes of Hart and Londonderry: see Ant. Coun. Mins, 18 and 27 Feb., 1725; and cf. Coun. Mins of St. Christopher, 3 Jan, 1725, ibid., and of 16 Dec., 1728, C.O. 155/7.
22. For points regarding the different provisions made for future needs, see
    (a) Montserrat Ass. Mins, 4 April, 1741, C.O. 177/4.
    (b) St. Christopher Ass. Mins, 7 and 27 Oct., 1779, C.O. 241/17.
    (c) Preamble to Antiguan Tax Act, 10 Sept., 1668, C.O. 154/2, p. 40: cf. Ant. Coun. Mins, 14 Dec., 1699, C.O. 155/2, p. 234.
    (d) Nevis Ass. Mins, 24 March, 1746, and 5 June, 1747, C.O. 186/3. Cf. message of Nevis Council to the Assembly, 13 May, 1772, in Ass. Mins of that date, C.O. 186/6.
23. See Commission and Instructions to Sir Nathaniel Johnson, 1686, C.O. 153/3, pp. 209 and 219 resp. This remained a constant provision for the whole of the following century.
24. There is evidence to show that joint adjustment of accounts dated from the earliest years of the Restoration, see C.O. 1/48, No. 61. It would have been very difficult, therefore, for a governor to overturn it.
25. Hamilton's ruling is recorded in Coun. Mins of St. Christopher, 25 Feb., 1718, C.O. 241/2.
26. See Antiguan Tax Act, 10 Sept., 1668, C.O. 154/2, p. 270: and Nevis Ass. Mins, 21 June, 1682, C.O. 1/48, No. 79. Cf. also St. Christopher Coun. Mins, 17 July, 1683, C.O. 1/51, No. 98, with St. Christopher Coun. Mins, 30 Oct., 1684, C.O. 1/57, No. 48.
27. C.O. 240/1.
28. Mont. Coun. Mins, 18 April, 1713, C.O. 155/5. It would appear that all the Assemblymen who were present when the warrant was made out were required to sign it.
29. By Order-in-Council, 1 March, 1711, *Cal. S.P., Col., 1710-11*, Nos. 690 and 691.
30. Particulars of this dispute of 1718 are given in the Assembly and the Council Minutes of Antigua, 29 Oct., 1718, to 16 March, 1719, in C.O. 9/3 and C.O. 9/4 respectively. Cf. Hamilton to the B. of T., 24 April, 1719, C.O. 153/13, p. 402; and C.O. 152/12, Nos. 140 (ii) and (iv). The *Tax Act* of 1719 is recorded in C.O. 8/4.
31. This Act and all later ones were simply allowed to "lie by" without either formal confirmation or rejection.
32. C.O. 391/60, p. 77. For further papers on this dispute of 1751-3, see Fleming to B. of T., 10 April and 9 July, 1751, C.O. 152/27; B. of T. to Fleming 6 Aug., 1751, C.O. 153/17. Compare the proceedings of the Antiguan Agent, Mr Sharpe, before the B. of T. in 1752, C.O. 391/59, pp. 280-99. See also Antiguan Coun. Mins, 10 Aug., 1753, C.O. 9/19. Finally peruse Thomas to the B. of T., 8 Oct., 1753, C.O. 152/27; together with the Board's reply to him, 18 Dec., 1753, C.O. 153/17, p. 440.
33. This is clear from a perusal of the Council Minutes of the period, C.O. 155/6, *passim*, particularly those of 7 June and 22 Nov., 1722, and of 11 July, 1723.
34. The House made full use of both devices. See the very detailed appropriation clauses of the *Poll Tax Act* of 19 May, 1724, C.O. 240/6, No. 8; and compare

the Assembly's claim to examine into the manner in which certain moneys entrusted to Lieut. General Mathew for the repair of the island fortifications had been expended. Hart strongly supported their demand and himself ordered Mathew to submit to the House all his accounts and vouchers. Mathew, after some demur, at length complied. See Coun. Mins, 29 Jan. to 5 March, 1726, C.O. 155/6: and cf. Ass. Mins, 5 Dec., 1747, C.O. 241/1.

35. For evidence on all these points, compare the following:—Coun. Mins, 13 July, 1724 and 3 Jan., 1725, C.O. 155/6; Coun. Mins 16 Dec., 1728, C.O. 155/7; and Coun. Mins, 7 Nov., 1729, 18 Dec., 1731, and 20 April, 27 July, and 15-16 Aug., 1732, all in C.O. 241/3.
36. *Poll Tax Act* of St. Christopher, 1733, C.O. 240/5.
37. The story of this early phase (1734-40) of the St. Christopher dispute is given concisely in a despatch from Lieut. General Gilbert Fleming to the B. of T., written about the middle of 1741, C.O. 152/24, Y.41.
38. Coun. Mins of St. Christopher, 19 Jan., 1741 to 14 May, 1742, C.O. 241/4, give particulars of this second stage of the quarrel. Cf. *Tax Act* of 22 May, 1742, C.O. 240/7, No. 22.
39. Ass. Mins, 2 and 22 Aug., and 5 Sept., 1744, C.O. 241/5. Cf. *Tax Act* of 5 Sept., 1744, C.O. 240/8, No. 30.
40. The exact date of the change is no longer discoverable, but it was probably 1747. We know that by Dec., 1749, the Assembly was again in possession of a joint authority over all accounts; see Ass. Mins, 5 and 19 Dec., 1749, C.O. 241/6.
41. For the progress of this dispute, 1749-54, see Ass. Mins, 27 Aug., 1750 to 26 March, 1754, C.O. 241/6. Cf. Fleming to the B. of T., 22 Dec., 1750; 10 April, 9 July, and 13 Dec., 1751; 18 June and 23 Dec., 1752; and 4 April, 1753, all in C.O. 152/27. Cf. B. of T. to Fleming, 23 Oct., 1750, C.O. 153/17 p. 82. See also Thomas to B. of T. 21 Jan., and 22 May, 1754, and 12 Nov., 1755, C.O. 152/28; and cf. B. of T. to Thomas, 15 Oct., 1754, C.O. 153/18, p. 21. Lastly examine the *Tax Act* of 28 March, 1754, C.O. 240/9; and compare with it one of 23 April, 1755, recorded in the same volume.
42. Ass. Mins, 23 Aug., and 1 and 15 Dec., 1779, C.O. 241/11. Cf. Coun. Mins, 6 Oct., 1780, C.O. 241/12.
43. Since 1720 the St. Christopher Assembly had been in the habit of safeguarding the revenue as best they could by means of fairly detailed appropriation clauses: see the terms of the *Poll Tax Act* of 19 May, 1724, C.O. 240/6, No. 8.
44. This Act raised a fund of £1458 and appropriated it in the following manner, that is to say, for the gentlemen prisoners at Martinique, £600; to be shipped to Agent Joseph Jorey, £150; to repair the old prison house, £150 to be paid for the rent of the Lieutenant General's house, £175; the balance "to be disposed of as both Houses shall . . . direct": see Nevis Coun. Mins, 17 April, 1711, C.O. 155/4; and compare the appropriation terms of later tax Acts in the C.O. 185 series.
45. Coun. Mins, 20 Nov., 1718, C.O. 155/5.
46. For good illustrations of this committee, see Ass. Mins, 23 May, 1734, 10 March, 1736, and 2 March, 1738, C.O. 186/2.
47. Compare the appropriation terms of a *Tax Act* of 1724, recorded in Ass. Mins, 13 April, 1724, C.O. 186/1, with those of 1746 and 1747, recorded in Ass. Mins, 27 March, 1746 and 5 June, 1747, resp., C.O. 186/3.
48. Fleming to B. of T., 9 July, 1751, C.O. 152/27. Prior to this Fleming had been unaware of the objectionable nature of the Nevis procedure: cf. same to same, 10 April, 1751, ibid.
49. For a specimen tax measure, see Nevis *Levy Act*, 19 June, 1769, C.O. 185/7. Compare Ass. Mins of 18 July, 1769, 13 May and 16 July, 1772, C.O. 186/5, for examples of the actual "address" system of authorising the payment of accounts.
50. That this was really the case may be gauged from an examination of the following papers:—Mins of combined Coun. and Ass., 10 Aug., 1693, C.O.

155/1, p. 320; Coun. Mins, 4 March, 1726, C.O. 155/7; Coun. Mins, 4 April, 1741, C.O. 177/3. See other instances of joint adjustment, 1730-50, in C.O. 177/2 to 177/5, *passim*. Finally note C.O. 177/13, Ass. Mins, 26 Oct. and 8 Dec., 1774.

51. *Poll Tax Act*, 18 Feb., 1727, C.O. 176/2. Cf. *Poll Tax Act* of 14 April, 1739, C.O. 176/4.
52. Fleming to B. of T., 10 April, 1751, C.O. 152/27. Cf. Mont. *Poll Tax Act* of 6 April, 1751, C.O. 176/5.
53. C.O. 177/7 contains a copy of this *Poll Tax Act* of 23 March, 1754.
54. The first recorded Act which reverts to a mention of the old "committee appointed for the settlement of the public accounts" was that of 17 April, 1775, C.O. 176/7, No. 35.
55. That this was so may be seen from an examination of the following:— Coun. Mins, 18 April, 1713, C.O. 155/5; Coun. Mins, 25 April, 1722, C.O. 155/6; an *Act . . . to prevent members of the Council and Assembly signing any adjustments out of their respective Houses*, 4 May, 1722, C.O. 176/2; Coun. Mins and Ass. Mins of 25 April, 1734, C.O. 177/2; orders issued in the 1740s signed by both Houses, C.O. 177/5 *passim*. Compare Coun. Mins, 13 March, 1773, C.O. 177/11, with Ass. Mins of that date, C.O. 177/12. Finally peruse the *Poll Tax Act* of 28 March, 1778, C.O. 176/8, which definitely enjoins the Treasurer to issue money only upon orders signed by the Lieut. Governor or President, and countersigned by the Speaker.
56. Coun. Mins, 20 Feb., 1715, and 22 March, 1716, C.O. 155/5.
57. Fleming to the Assembly of St. Christopher, recorded in St. Kitts Council Minutes, 2 April, 1741, C.O. 241/4.

Chapter X

1. See Chapter I of the text.
2. See an instance of this in the minutes of a combined meeting of the Lieut. Governor, Council and Assembly of St. Christopher, 23 July, 1678, C.O. 1/28, No. 69. Compare similar instances in the minutes of the combined meetings of the Lieut. Gov., Council and Assembly, 1692-6, C.O. 155/1, *passim*.
3. For references to this early joint committee procedure, see (a) Montserrat *Tax Act*, 24 Feb., 1673, C.O. 154/1, f. 88. (b) Mins of Gov., Coun. and Ass. of St. Christopher, 29 April, 1676, C.O. 1/28, No. 69. (c) Antiguan Council Minutes, 19 July, 1683, C.O. 1/50, No. 81; cf. same for 2 Nov., 1692, C.O. 155/2. (d) Minutes of combined meeting of Gov., Coun. and Ass. of Nevis, 22 May, 1693, which gives details of the case above cited. Compare a similar Nevis committee set up to buy provisions for 61 men sent out on a scouting expedition: Coun. Mins, 15 Nov., 1695, ibid.
4. In a great many cases the Governors were still allowed undisputed administrative authority. For example, in 1702, work upon Monk's Hill Fort in Antigua was managed by a body of commissioners chosen by, and subject to, the instructions of the Commander-in-Chief of the island; see Act of 25 April, 1702, C.O. 8/3, f. 135. In this island, too, the early commissioners of fortifications within every precinct were subject to the orders of the Lieut. Governor and Council, C.O. 155/2, pp. 102 and 105. In Montserrat the Lieut. Governor in the early 18th century was often left a free hand in the management of public works; see C.O. 176/3 for an *Act for repairing the several forts and platforms of this island*, dated 21 April, 1705, and cf. Mont. Coun. Mins, 19-20 Dec., 1711, C.O. 155/4, for a 1711 *Act for employing forty negroes about the fortifications*, which left to the Governor and Council the management of the entire works. In St. Christopher, during the regimes of Hart and his immediate successors (1720-40) the Governor and Council were left a free hand over the fortifications; see a *Fortifications Act* of 4 Oct., 1720, C.O. 240/1, f. 109, and compare similar Acts passed in 1724 and 1728

respectively, recorded in Baskett, *Acts of St. Christopher*, Nos. 64 and 76. See also a *Fortifications Act* of 9 Feb., 1734, C.O. 240/5, and compare a continuing Act of 3 Aug., 1739, C.O. 240/7, No. 3.

5. Nevis Coun. Mins and Ass. Mins, 18 Aug., 1705, C.O. 155/3.
6. Coun. Mins of St. Christopher, 22 Jan., 1707, C.O. 241/1.
7. Ant. Coun. Mins, 9 Aug. and 3 Nov., 1707, C.O. 9/1.
8. Nevis Coun. Mins, 1 and 20 Aug., 3 and 11 Sept., 24 Nov., and 10 Dec., 1735, C.O. 186/2. This committee, instead of being subject to orders from the Governor and Council, was subject only to such instructions as both Houses mutually agreed to give it.
9. For details of these Saddle Hill committees, see Nevis Coun. Mins, 3 Sept. and 15 Dec., 1739, C.O. 186/3; and Ass. Mins for the following dates—10 and 17 Jan., 10 March and 13 Dec., 1740; 25 March, 3 and 8 June, 1742; and 1 Aug. and 6 Sept., 1745, ibid.
10. Nevis Ass. Mins, 25 March and 3-8 June, 1742, C.O. 186/3.
11. See Note 4 *supra*. Notice, however, the appointment of a joint committee "to lay out and direct the batteries intended to be raised at the . . . forts of Londonderry, Smith's and Bluff Point"; Coun. Mins of St. Christopher, 20 Feb., 1733, C.O. 241/3.
12. Mathew remained Governor of the Leeward Islands for twenty years (1733-53).
13. Mathew to the Lieut. Gov. of St. Christopher, 31 Oct., 1741, recorded in St. Christopher Coun. Mins, 10 Nov., 1741, C.O. 241/4.
14. C.O. 240/7, No. 20. This Act was passed on 25 Feb., 1742.
15. Mathew to Fleming, 14 April, 1742, recorded in St. Christopher Coun. Mins, 21 June, 1742, C.O. 241/4.
16. See an *Act for repairing the cisterns . . . and . . . platforms . . . on Monk's Hill*, 17 April, 1734, C.O. 8/6. Cf. an *Act for building a platform . . . and reservoirs of water at English Harbour*, 8 Feb., 1734, ibid.
17. *Act for enlarging . . . James Fort*, 29 Jan., 1740, C.O. 8/7. Cf. an *Act for carrying on the building of the barracks*, 10 July, 1741, C.O. 8/8.
18. Compare (a) Ant. Ass. Mins, 14 March and 13 May, 1755, C.O. 9/22.
    (b) Nevis Coun. Mins, 22 Oct., 1767, C.O. 186/4.
    (c) St. Christopher Ass. Mins, 27 Sept., 1768, C.O. 241/11.

    Montserrat does not seem to have adopted such standing committees for fortifications.
19. For evidence as to the powers of joint committee of defence in the various islands between 1770 and 1785, see:—
    (a) ST. CHRISTOPHER: Coun. Mins, 6 May, 1772, C.O. 241/12; Ass. Mins, 20 May, 1773, C.O. 241/11; Ass. Mins, 7 Nov., 1774, C.O. 241/16; and Ass. Mins, 1 Sept., 1778, C.O. 241/17. Examine also a 1779 *Act to oblige all owners . . . of slaves . . . to send a proportion thereof to work on the . . . fortifications*, C.O. 240/13; and compare the Ass. Mins of 27 Oct. and 10 Nov., 1779, for enclosed records of commissioner meetings, C.O. 241/17.
    (b) ANTIGUA: Coun. Mins, 13 Feb., 1783, C.O. 9/33; and Ass. Mins, 27 May, 1784, C.O. 9/43. See also C.O. 8/19 for an *Act for the regulation of his Majesty's forts and fortifications in this island*, 18 Feb., 1776.
    (c) NEVIS Ass. Mins, 26 July, 1770, 18 April, 1771, 9 and 28 April, 1772, and 7 Sept., 1773, C.O. 186/5.
20. In Antigua and Barbados the raising of alarms and proclamations of martial law required the consent of the Assembly: see Chapter IV, Section 3 on Militia.
21. For all points in connection with this Antiguan situation, cf. Ant. Coun. Mins, 17 Feb., 1782, C.O. 9/40, with Ant. Ass. Mins of same date, C.O. 9/42.
22. St. Christopher *Act for raising a number of able-bodied slaves . . . against Martinique*, 1 Jan., 1762, C.O. 240/10: cf. Montserrat Act passed for the

same purpose, recorded in Ass. Mins, 24 Dec., 1761, C.O. 177/10; and an Antiguan Act of the same nature, 24 Nov., 1761, C.O. 8/13. In conjunction with this last Act, the Antiguan Ass. Mins of 14 Jan., 1762 should be read in C.O. 9/25. Nevis records of this period are not now traceable, so we cannot ascertain what steps were taken in that island.

23. Nevis Coun. Mins, 4 Feb., 1708, C.O. 155/3.
24. Ant. Ass. Mins, 21 July, 1716, C.O. 9/4.
25. *Act for the building of a church in the parish of St. Anthony*, 7 Feb., 1734, C.O. 176/2.
26. Ant. Coun. Mins, 5 June, 1747, C.O. 9/18. Cf. an *Act for building a Public Court House*, 1 Feb., 1748, C.O. 8/10.
27. St. Christopher Ass. Mins, 10 and 17 Aug., 1747, C.O. 241/5.
28. St. Christopher Coun. Mins, 18 June, 1747, C.O. 241/5. Cf. *Laws of St. Christopher, 1711-1831*, No. 152.
29. Mont. Coun. Mins, 9 Feb., 1754, C.O. 177/6.
30. An *Act . . . for the erecting . . . a public Registrar's Office*, 8 Feb., 1765, C.O. 8/14.
31. For details of this venture, see Nevis Ass. Mins, 19 May, 1772 and 25 Jan., 1773, C.O. 186/5. Cf. Nevis Coun. Mins, 17 Sept., 1772; 25 Jan., 8 May, 7 Sept., 19 Oct., and 2 Dec., 1773; 1 Sept., 1774; and 6 Oct., 22 Oct., and 3 Nov., 1778; all in C.O. 186/7.
32. Mont. Ass. Mins, 3 and 8 Dec., 1774, C.O. 177/3. Compare a similar project from St. Christopher which was, however, never carried into effect, outlined in an *Act for the bringing down of fresh water from the public rivers of this island to the town of Basseterre*, 24 Aug., 1768, C.O. 240/11.
33. Works that required only a small expenditure were generally let out to contract by the Treasurer, acting under the authority of both Houses.
34. Nevis Coun. Mins, 8 April, 1707, C.O. 186/7.
35. St. Christopher Ass. Mins, 1 Sept., 1778, C.O. 241/17.
36. Mont. Coun. Mins, 18 March, 1745, C.O. 177/5.
37. Mont. Ass. Mins, 8 Aug., 1778, C.O. 177/5. On this day the Assembly agreed with John Cannoniell to move some cannon from one fort to another. Only after having come to terms with him did they trouble to notify the Council of what they had done.
38. Cf. the St. Christopher Coun. Mins of 22 July, 1785, with those of 15 Aug. following, both in C.O. 241/18.
39. *Act for repairing the cisterns . . . and . . . the platforms . . . on Monk's Hill*, dated 27 April, 1734, and endorsed "No objection", C.O. 8/6.
40. Act dated 29 Jan., 1740, in C.O. 8/7. For a similar Act entitled an *Act for enlarging the wharf at English Harbour*, passed 23 Jan., 1744, and endorsed "No objection", see C.O. 8/9. There are further Acts of this kind in the C.O. 8 series.

Chapter XI

1. Davis Papers, Box 5. Printed copy of a commission to William Powrey (Povey?), dated 3 Feb., 1640.
2. Add. MSS. 11411, f. 54(b). Thos. Povey to Daniel Searle, 8 Jan., 1658.
3. Compare patent to Francis Cradock for the office of Provost Marshal of Barbados, 2 Aug., 1660, C.O. 1/14; with *Cal. S.P., Col., 1661-8*, No. 95.
4. Commission to William Lord Willoughby, 1672, C.O. 29/1, p. 141.
5. Add. MSS. 25120, f. 96. Coventry to Atkins, 28 Nov., 1676.
6. For the Barbadian Attorney-General, see Barb. Coun. Mins, 25 Jan., 1687, C.O. 31/4. The Solicitor-General was still appointed by the Governor in 1755, Hall, *First Settlement of Barbados*, p. 39; but by 1773 had become appointed from England, C.O. 31/34, Coun. Mins, 26 Oct., 1773.
7. See *Cal. S.P., Col., 1677-80*, No. 450, for Cotter's patent of 9 March, 1677. Cf. Stapleton's remarks upon it, ibid., No. 1418; and Johnson's observations given in a letter to the L. of T. & P., 3 March, 1688, C.O. 1/64, No. 28.

8. The Attorney-General of the Leeward Islands was first appointed by royal warrant in 1754, whilst the place of Solicitor-General was filled in a similar manner seven years later: cf. royal warrant of 21 June, 1754, to Gov. Thomas, C.O. 152/28; with a similar warrant to the same Governor in 1761, C.O. 153/19, pp. 68-9.
9. There was one instance in 1735 of a direct royal commission for a Chief Judgeship in the Leeward Islands. In that year James Gordon secured such a commission to be Chief Justice of St. Christopher; see mention of these particulars in a Petition from Gordon to the Crown in connection with his subsequent displacement by Governor Mathew, C.O. 152/24. But such royal appointment to Chief Judgeships was distinctly unusual at so early a date. In 1754, however, Joseph Herbert, who had been appointed by Gilbert Fleming in 1752 to be Chief Justice of Nevis, craved and obtained royal confirmation for that post (cf. Fleming to B. of T., 19 June, 1752, C.O. 152/27; with the royal warrant for Herbert's appointment, 21 June, 1754, C.O. 152/28). All the other Chief Justiceships within a few years similarly became Crown appointments.
10. Commission to Francis Lord Willoughby, 12 June, 1663, C.O. 29/1. Stapleton in the Leeward Islands was given similar powers: see his commission dated 10 Feb., 1672, C.O. 1/28, No. 13.
11. Cf. Sloane MSS. 2441, ff. 14-15, with *Cal., S.P., Col., 1685-8*, No. 461.
12. The Governor retained power up till 1728 to suspend customs officers for the dishonest performance of their duties, but in that year even this was taken from him and given instead to the local Surveyor-General of Customs, see Instructions to Gov. Worsley of Barbados, 1728, C.O. 29/15, p. 29.
13. *Act declaring how the clerks and marshals of the Courts of Common Pleas . . . shall be appointed*, 5 Sept., 1667, C.O. 30/2, p. 54.
14. It was challenged, though unsuccessfully, by Provost Marshal Edwin Stede in 1674; see *Cal. S.P., Col., 1669-74*, Nos. 1167 and 1281. Cf. C.O. 31/1, pp. 265-7.
15. For papers on the complaints of Gordon and Skene, see *Cal. S.P., Col., 1708-9*, Nos. 326, and 582; *1710-11*, Nos. 66 (II), 134 and 354. Cf. *A.P.C., Col., 1680-1720*, No. 1093.
16. Kendall to L. of T. & P., 4 July, 1691, C.O. 28/1, No. 66.
17. For papers relating to the dispute between Skene and Grey, see *Cal. S.P., Col.*, 1701, Nos. 305, 610, 717 and 988. Cf. *1702-3*, No. 736.
18. For a summary of Skene's struggle against Crowe, and the action of the Privy Council upon it, see *A.P.C., Col., 1680-1720*, No. 1082.
19. Kendall to L. of T. & P., 4 April, 1691, C.O. 28/1, No. 60.
20. *Cal. S.P., Col., 1706-8*, Nos. 1145, 1167 and 1364 (I). Cf. Chalmers, *Opinions*, I, p. 168.
21. According to the findings of the B. of T. the Governors had customarily enjoyed the right to fill the offices of Registrar of the Admiralty Court in Antigua, and Registrar of the Admiralty, Registrar in Chancery, and Clerk to the Ordinary in St. Christopher.
22. As a matter of fact Smith was a partner with Savil Cust in the Secretaryship, the two being joint patentees for the office. Smith, however, was the active figure in all these transactions.
23. For select papers upon this dispute, see a statement of Smith's case in Antiguan Coun. Mins, 10 April, 1724, C.O. 9/5; Hart's Statement to the Antiguan Council, recorded in Ant. Coun. Mins, 18 Feb., 1725, C.O. 155/6; and the B. of T. representation to the Crown upon the dispute, 19 May, 1726, C.O. 153/14, pp. 211-4.
24. Cf. Barb. Ass. Mins, 1 Dec., 1674, C.O. 31/2; with a record of the civil establishment of the island (1773) given in Coun. Mins, 26 Oct., 1773, C.O. 31/34.
25. Minutes of the General Council, 27 March, 1710, C.O. 155/3. Cf. *Cal. S.P., Col., 1710-11*, No. 520, Cunynghame to the B. of T., Nov., 1710.

26. Ant. Coun. Mins, 3 Nov. to 7 Dec., 1710, C.O. 9/2.
27. Gov. Douglas insisted that the Clerk, when chosen by the House, should be sworn before the Council, but he did not insist upon his own right to commission him; Ant. Coun. Mins, 17 July, 1712, ibid.
28. Nevis Coun. Mins, 16 March, 1722, C.O. 155/6.
29. For the Messenger, see Ant. Ass. Mins, 25 Jan., 1722, 11 June, 1723, and 23 Jan., 1724, C.O. 9/5. For the Clerk, see Ant. Coun. Mins, 3 Aug. and 26 Nov., 1724; and Ass. Mins, 26 Nov., 1724, ibid.
30. Ant. Ass. Mins, 23 July, 1742, C.O. 9/14.
31. St. Christopher Ass. Mins, 27 July, 1748, C.O. 241/6.
32. Compare St. Christopher Ass. Mins, 2 June, 1780, C.O. 241/11; with Coun. Mins, 21 Sept. and 26 Oct., 1780, C.O. 241/12. Finally peruse the Ass. Mins for 2 March, 1781, C.O. 241/18.
33. Compare Mont. Ass. Mins, 18 March, 1775, C.O. 177/13; with Coun. Mins of that date, C.O. 177/14.
34. Compare Ant. Coun. Mins, 11 Dec., 1783, C.O. 9/42; with Ass. Mins, 5 June, 1786, ibid. See also Coun. Mins, 22 Feb., 1781, C.O. 9/40.
35. See Penson, L. M., *Colonial Agents of the British West Indies*, pp. 48-88, for the full story of Barbadian controversies over the appointment of agents.
36. Coun. Mins of St. Christopher, 2 to 7 June, 1733, C.O. 241/3. Cf. Baskett, *Acts of St. Christopher*, 1711-35, No. 88. For a similar Antiguan incident, see Ant. Ass. Mins, 14 Dec., 1727 and 25 Jan., 1728, C.O. 9/3.
37. See (a) Mont. Coun. Mins, 11 Sept. to 16 Oct., 1716, and 29 March, 1718, C.O. 155/5.
    (b) Ant. Coun. Mins, 30 March and 24 April, 1744, C.O. 9/15. Cf. Coun. Mins, 28 Feb., 1745, C.O. 9/17
    (c) Nevis Coun. Mins, 30 March, 1750, C.O. 186/3.
38. *Laws of Antigua, 1668-1804*, vol. I, No. 109.
39. Ant. Coun. Mins, 5 Dec., 1772, C.O. 9/32.
40. Ant. Coun. Mins, 4 and 23 July, 1782, C.O. 9/33. In 1786 the same method of selection was followed; Ass. Mins, 5 June, 1786, C.O. 9/42.
41. This is abundantly clear in the case of Barbados; and Stapleton, writing of the Leeward Islands in 1680 stated that "there [was] a receiver or treasurer . . . appointed, though not by any commission, to keep an account of what [was] levied." Stapleton to L. of T. & P., 1680, C.O. 1/45, No. 43.
42. Jennings, *Acts*, Nos. 83 and 85, March and April, 1653, respectively.
43. *Liquor Excise Act*, 6 Oct., 1670, C.O. 29/1, pp. 125-9.
44. Cf. Barb. Coun. Mins, 20 Jan., 1675, C.O. 31/1; with Ass. Mins, 21 Jan., 1675, C.O. 31/2.
45. For this quarrel of 1690-1, cf. Barb. Ass. Mins, 16 Dec., 1690 to 15 Jan., 1691, C.O. 31/3; with Coun. Mins, 17 Dec., 1690 to 15 Jan., 1691, C.O. 31/4. Finally examine Kendall to the L. of T. & P., 4 April, 1694, C.O. 28/1, No. 60; and cf. *Cal. S.P., Col., 1710-11*, No. 296.
46. For outlines of this quarrel of 1710, see *Cal. S.P., Col., 1710-11*, Nos. 201, 264, 377, 402 and 403. Cf. a further paper recorded in the Barb. Ass. Mins of 13 May, 1746, C.O. 31/34.
47. Antiguan *Tax Act*, 10 Sept., 1668, C.O. 154/2, p. 270. Compare a St. Christopher *Tax Act* of 7 June, 1672, C.O. 154/1, f. 97; with the minutes of a combined meeting of the Gov., Coun., and Ass. of that island, 5 March, 1678, C.O. 1/28, No. 69.
48. Cases illustrating this are quite numerous, and only select instances can be given. See, however, (a) Nevis Mins of combined Coun. and Ass., 26 April, 1694, C.O. 155/1. (b) Mont. Ass. Mins, 19 Sept., 1707, C.O. 177/1. (c) St. Christopher Ass. Mins, 26 Jan. 1715, C.O. 155/5. (d) Ant. Coun. Mins, 8 Nov., 1715, C.O. 9/3.
49. In Jan., 1717, William Wooddrop, the existing Treasurer of St. Christopher, received a commission from Hamilton; see Coun. Mins of St. Christopher, 15 Jan., 1717, C.O. 241/2. A few months later the Governor successfully

insisted before the Montserrat Assembly that the appointment of their Treasurer belonged to him; see Mont. Ass. Mins, 18 June and 16 July, 1717, C.O. 155/5. In the middle of 1718 Jeoffrey Meriweather, the existing Nevis Treasurer, also received a commission for his place; see Nevis Coun. Mins, 30 June, 1718, ibid.

50. St. Christopher Coun. Mins, 22 and 27 Oct., 1722, C.O. 155/6.
51. Ant. Ass. Mins, 26 Sept. to 4 Oct., 1726, ibid.
52. For papers concerning this dispute over the Comptroller, see Barb. Coun. Mins, 20 Jan., 1675, C.O. 31/1; and cf. Ass. Mins, 21 Jan. and 14 April, 1675, C.O. 31/2. Finally examine Ass. Mins of 12 Dec., 1677, ibid.
53. *Laws of Antigua, 1668-1804*, vol. I, No. 102.
54. See, for instance, Ant. Coun. Mins, 2 April, 1742, C.O. 9/14. Cf. a similar case recorded in Coun. Mins of 31 Oct., 1772, C.O. 9/32.
55. Barbadian Act of 1697, confirmed by the Crown in 1702, Hall, *Acts*, No. 98. Montserrat Act of 15 Feb., 1715, C.O. 152/13, p. 99. Later Acts continued the same process.
56. Compare his selection in 1693, C.O. 155/1, pp. 247-50; with his appointment in 1715, as shown in Coun. Mins 24 Nov., 1715, C.O. 9/3.
57. Hamilton to the B. of T., 14 Oct., 1718, C.O. 152/12, No. 119.
58. The records that deal with the situation are no longer discoverable, but it is clear that by an Act of 3 Nov., 1720, the method of the officer's appointment was no longer specified: *Powder Duty Act* of that date, C.O. 8/4. This indicates that the Assembly had been persuaded to give up its privilege. It is further certain that Gov. Hart only a year or two later enjoyed the sole power of appointing him: see Ass. Mins, 20 Sept., 1722 and 10 Jan., 1723, C.O. 9/5.
59. *Act for the better ascertaining the true and exact gauge . . . of casks*, 1 Sept., 1736, C.O. 30/9. Cf. an *Act appointing an Inspector of Health*, 24 Jan., 1739, C.O. 30/10.
60. *Prohibition of Hucksters Act*, 15 March, 1774, C.O. 30/14.
61. *Act for appointing a Harbour Master*, 31 Aug., 1779, C.O. 30/15.
62. *Act for the better regulation . . . of the Registrar's Office*, passed in 1698, confirmed in 1700 by the Crown, and recorded in *Laws of Antigua, 1668-1804*, vol. I, No. 106.
63. *Act for making, cleaning, and repairing the public ponds*, 28 June, 1702, confirmed by the Crown in 1703, C.O. 8/1. For the mode of the commissioners' appointment in 1782, see Ass. Mins, 23 July, 1782, C.O. 9/42.
64. For points relating to the development of this official's appointment, see an *Act against covinous and fraudulent conveyances*, passed 1727, confirmed 1728, and printed in *Laws of St. Christopher, 1711-1831*, No. 69. Compare Ass. Mins, 14 June, 1727, C.O. 241/1. Examine also the following:—Coun. Mins, 27 Nov. and 18 Dec., 1738, 15 Feb. and 1 March, 1739, C.O. 241/4; also Ass. Mins, 24 Sept., 1754, C.O. 241/6, and Coun. Mins, 11 Sept., 1786, C.O. 241/18.
65. For papers on the choosing of this officer, see Mont. Coun. Mins, 5 June to 16 Oct., 1740, C.O. 177/3. Cf. Ass. Mins of that period in C.O. 177/3 and 177/4. Finally, examine Ass. Mins, 16 Feb., 1749, C.O. 177/7; and Ass. Mins, 12 April, 1755, C.O. 177/8.
66. In this rudimentary description, I have disregarded the Courts of Chancery and Appeal, which were held in each government by the Governor and the local Councillors, who (except in the case of the Chancery in Jamaica) were judges *ex officio* in both these divisions.
67. This discussion of the position of appointments in 1780 is based upon the following main sources of information:—
(a) Hall, *First Settlement of Barbados*, pp. 25-44; (b) Frere, *Short History of Barbados*, pp. 90-103; (c) Report to the Board of Trade upon the civil establishment of Barbados, 1773, recorded in Barb. Coun. Mins, 26 Oct., 1773, C.O. 31/34; (d) Poyer, *History of Barbados*, Chap. XVIII; (e) Gov.

Ralph Payne's Report of 26 June, 1774, to the B. of T. upon the civil establishment of the Leeward Islands, C.O. 152/54.

Chapter XII

1. For Povey's patent, 10 Jan., 1661, see C.O. 140/2, App. p. 1. For Lynch's grant, see *Cal. S.P. Col., 1661-8*, No. 13. For Mann's appointment, *ibid*, No. 14. The island Secretary was secretary to the Council and to the entire administration, including the Governor. He handled the bulk of all official correspondence, working on a basis of both salaries and fees, and employing whatever subordinates he required. The Provost Marshal was the officer in charge of law and order. He and his subordinates were marshals of the Council and of the various courts, made all arrests, published all proclamations, made all distraints, and generally did all the work now done by the police.
2. See grant to Robert Clowes of the Chief Clerkship of the Supreme Court for life, 1672, in C.O. 137/4; the grant of the Registrarship of the Court of Chancery and Clerk of the Patents to Thomas Dereham, 1673, *Cal. S.P. Col., 1669-74*, No. 119; the grant of the Clerkship of the Common Pleas at Port Royal to Anthony Wingfield, ibid, No. 1120; and mention of the Clerkship of the Crown and the Peace as a patentable place about 1685 in C.O. 137/2, No. 70 (ix).
3. A copy of the patent for the Receiver General's office to Thomas Martin and Leonard Compeare (1674) for life is in C.O. 137/4, f. 360; for grant of the Auditor Generalship to Wm. Blathwayt for life (1680) see *Cal. S.P. Col., 1681-5*, No. 241. In connection with the earliest patent grant of the Naval Officer's place, see preliminaries to the grant to Reginald Wilson in 1681, C.O. 138/4, pp. 52-3; and for the Attorney Generalship, see mention of Wm. Broderick being the holder of this office by letters patent, in Coun. Mins, 13 March, 1693, C.O. 140/5, p. 245.
4. Lynch's description of Jamaica, 20th Sept., 1683, C.O. 138/4, p. 226.
5. For papers on Albemarle's appointment of extra clerks, see Coun. Mins, 14 Feb. and 22 Dec., 1688, C.O. 140/4, ff. 196 and 257 resp.
6. Cf. Coun. Mins, 29 May, 1691, 18 and 28 Jan. and 14 March, 1692, C.O. 140/5, pp. 80, 119, 124, and 149; and see *Cal. S.P. Col., 1689-92*, No. 2787.
7. The first mention of this office that I have come across dates from 1747. On 4th Aug., 1748, one John Reid was given an order on the Receiver General for £500; being a year's salary "for carrying the public despatches" from June 2nd, 1747, to June 2nd, 1748: see Coun. Mins, 4 Aug., 1748 C.O. 140/31. Until 1783 this official had no right to fees of any kind, which explains the public indignation stirred up in Gov. W. H. Lyttelton's time (1762-66) when, at the Governor's behest, he started to charge fees for commissions and other kinds of business for his master's profit. In 1783, however, an island law authorised him to demand moderate fees for certain types of public business. See an *Act to regulate the fees of the Governor's private secretary* (1783), in *Laws of Jamaica, 1770-1783*, No. 106.
8. See *A.P.C., Col., 1745-66*, p. 385. C.O. 137/31 contains a copy of the Order-in-Council, dated 8 May, 1758.
9. In the early years of the island's history some of the leading patentees resided in the island. Richard Povey did for a short time, John Mann did until his death, and so did Sir Thomas Lynch and Reginald Wilson. Within a few years, however, most of the patentees began the habit of remaining in England, and the second generation of patent officers for all the major offices were almost invariably absentees. From the end of the seventeenth century, with the exception of the Attorney-General, only the very minor offices were ever executed by the patentees themselves. Even as early as 1693 the Secretary, the Provost Marshal, the Naval Officer, the Auditor-General, the Receiver-General, the Clerk of the Supreme Court, the Registrar of

Chancery, and the Clerk of the Crown were all residing in England. See a return of the public officers in 1693, C.O. 137/3, f. 82.

10. Beeston to B. of T., 15 July, 1697, C.O. 137/4.
11. See O.-in-C. dated 16 Feb., 1699, in *Cal. S.P. Col., 1699*, No. 104. Cf. C.O. 138/9, f. 338.
12. For papers bearing on the Jamaican complaints, the O.-in-C. resulting from them, the Jamaican Act obliging patentees to residence, and the subsequent fates of the measures, see the following: Memorandum of Jamaican Agents, 16 Feb., 1699, C.O. 137/4, ff. 297 and 311; copy of the Act in C.O. 139/9; petitions of patentees against it, C.O. 137/4, ff. 407 and 420 and C.O. 138/10, p. 11; and correspondence between the B. of T. and Beeston, ibid, pp. 58, 105, 139, and 285.
13. See Acts of 1711 and 1716 passed for this purpose, both of which were disallowed; cf. C.O. 138/14, pp. 28-31, 36-9 and 50-1, with *Cal. S.P. Col., 1717-18*, Nos. 168 and 364. For the colonist's vain attempts to curtail the fees of the patent officers, see the Fee Section of Chapter IV.
14. These customs officers were concerned with the collection of duties on trade imposed by the various Navigation Acts and other imperial measures. For a commission to Major Wm. Dyne to be Collector of imperial customs in Jamaica, dated 4 January, 1683, see C.O. 140/4, f. 32. Note also several papers in C.O. 137/11 relating to steps taken in 1715 by Mr Wm. Keith, "Surveyor General of Customs of the Southern Survey of the Continent of America", to put Jamaican customs administration into better order.
15. For a record of the first Jamaican postmaster, see Lieut. Governor Hender Molesworth to Wm. Blathwayt, 7 Dec., 1687, regarding the recent arrival of Mr James Wall "with a deputation from my Lord Rochester for post-master of this island", and complaining of the charges he extorted for letters and packets, C.O. 138/6, p. 74. The Jamaican Council was tempted to refuse recognition to Wall on the grounds that there was yet no post office officially established and legally recognised in the island. The difficulty must have been referred to England, for in the following year a special Order-in-Council, dated 22 July, 1688, was issued to clear up all doubt by directing that a "General Letter Office be erected and established in the Town of Port Royal or elsewhere in Jamaica", and authorising the Earl of Rochester as H.M. Postmaster-General to appoint a postmaster in Jamaica and erect the necessary buildings. The Order also laid down a suitable scale of postal charges. A copy of it is in C.O. 138/6.
16. For select references on early governors' control of these officers, see Col. Doyley's Instructions (1661), *Cal. S.P. Col., 1661-8* No. 22, cf., ibid, No. 1371; Governor Vaughan's assertion that he appointed the Judge (1675), C.O. 138/2 p. 70; and lists of public officers, with the authority for their appointment, sent home by Lieut. Governor Beeston in 1693 and 1698, C.O. 137/3, f. 82 and C.O. 137/4 f. 264 resp. For a good deal of, if not even the whole of, the period 1698-1721 the office of Judge of the Court of Vice-Admiralty was placed in commission, cf. 137/4 f. 264 with facts given in Long's *History of Jamaica*. I, p. 77. Long knew the Court of Vice-Admiralty well for he was for some time its Judge.
17. Carlisle to Secretary Coventry, 23 Nov., 1679, C.O. 138/3, p. 370. Cf. same to same, 24 Sept., 1679, ibid, p. 340, and Ass. Mins 28 Oct., 1679, in *Journal*, I p. 47 or C.O. 139/1, f. 223.
18. In the Duke of Albemarle's time (1687-8), however, an innovation was permitted which, if long continued, might have had serious consequences. The Duke, in order to procure regular and reliable information of the Assembly's proceedings, was tempted to follow Carlisle's example, but finally compromised by appointing a second Assembly clerk of his own choosing to keep him supplied with independent information. The House acquiesced in this, but cunningly at the beginning of a new Assembly in July, 1688, dropped their own appointee and chose the Governor's man to be their Clerk, thereby

at one stroke reducing the number of clerks to one and saving their own right of choice. See Coun. Mins. 11 and 18 Feb., 1688, C.O. 140/4, ff. 196-8, and cf. Ass. Mins. of that time, *Journal* I, pp. 101-5 and 120.

19. They had enjoyed the periodic services of chaplains before this but 1722 marks the beginning of the regular practice of official appointment. See *Journal*, II, pp. 16, 43, 98, 108, 137, 199, 409, 422, and 620, and III, pp. 1, 109, and 329.
20. For examples of payment of Assembly Clerk and Marshal in both 1682 and 1703, see C.O. 140/5, p. 357 (Ass. Mins, 7 Oct., 1682) and C.O. 140/7, p.29. (Ass. Mins, 25 March, 1703), and cf. Memorial of the Jamaican Council to the Board of Trade, 13 March, 1716, entered in *Journal*, II, C.O. 140/9, p. 221.
21. The statements regarding the Agent are made on the authority of Penson, L.M., *The Colonial Agents of the British West Indies*, except where otherwise stated.
22. See copy of the Act in C.O. 139/7, p. 239.
23. Inchiquin to L.T.P., 12 Aug., 1691, C.O. 137/2, No. 84.
24. See *Laws of Jamaica, 1684-98*, vol. II, p. 52 for this Act of 1693; cf. *Interesting Tracts relating to Jamaica*, St. Iago de la Vega, 1800, p. 140. The fact that the Agency bill was a money bill gave the Assembly the initiative and chief share in the selection of the Agents whose names were actually inserted in the text of it.
25. For select references see as follows: [1713-14], Ass. Mins, 4-15 Dec., 1713 and 17-20 Feb., 1714, *Journal*, II, pp. 107-112 and 132-4. Cf. Hamilton to B. of T., 26 Dec., 1713, C.O. 138/14, p. 110; and a copy of the disputed bill in C.O. 137/10, No. 51 (iii). [1715] Ass. Mins, 3 Nov.-23 Dec., 1715, in *Journal*, II; cf. Hamilton to B. of T., 5 March, 1716, C.O. 138/14. p. 437.
26. Ass. Mins, 16 June, 1720, *Journal*, II, p. 326.
27. For a copy of this Act, see C.O. 139/13. This power in the Committee to dismiss an Agent or Agents and appoint new ones was not, however, a new one, having been in the Act of 1693.
28. Quotation from the *Act to appoint Stephen Fuller*, etc., (1767) in C.O. 139/23. The facts of the 1767 dispute outlined in the text are derived from an unpublished thesis by J. W. Herbert entitled *Constitutional Struggles in Jamaica, 1748-1776* (Univ. of London Library) pp. 209-10. In 1767, too, the Assembly House in Spanish Town was ordained to be the only place of meeting for the committee of correspondence in the intervals between legislative sessions. This arrangement lasted until 1794 when it was decided to hire a special room in Spanish Town for its meetings. Penson, p. 143.
29. This necessity for Council's consent to all judicial appointments dates from the beginning of Lord Vaughan's governorship (1674); see Article 7 of his Instructions, 3 Dec., 1674, C.O. 140/2 (*Journal*, I), Appendix, p. 17. This article in some form or another was repeated to all his successors.
30. The masters in Chancery were the Governor's professional assistants in the Court of Chancery. In Edward Trelawny's time the legislature strongly desired putting the Chancery in commission and having the judges (or commissioners) appointed from England. See Trelawny to B. of T., 18 June, 1746, C.O. 137/24. Trelawny also favoured having the Chief Justice appointed from England; see same to same, 14 July, 1747, ibid. There was more virtue in the former proposal than in the latter, but, fortunately perhaps for Jamaica, neither came about. The Chief Justice enjoyed an official salary of £120, but the fees to which he was entitled averaged several hundred pounds a year. Indeed Bryan Edwards, writing in 1797, estimated the total emoluments of this office at about £3000 a year.
31. There were many instances of judges being restored by order of the Privy Council, but perhaps the most notable was the humiliation suffered by Governor Dalling in 1781 in being compelled to reinstate four Assistant Justices of the Supreme Court whom he had somewhat high-handedly dis-

placed the previous year. For various papers on this dispute, see C.O. 137/ vols. 79 to 80, and cf. *Journal, VII*, pp. 184 and 331.

32. For more details see the "Courts" section of Chapter IV.
33. Governor Dalling to Lord George Germaine, 27 Feb., 1779, C.O. 137/74. For select references to the Engineer and his manner of appointment, see O.-in-C. dated 27 March, 1746, relating to the supply of arms to Jamaica and the despatch of a new Engineer there, C.O. 137/24; and a revealing letter from Lieut. Gov. Moore to the B. of T., 10 Nov., 1759, C.O. 137/31. For particulars regarding the resignation of Engineer Thomas Craskell in 1782 and the appointment of Lieutenant Nepean to succeed him, see Lt. Gov. Campbell to Germaine, 26 Sept., 1781, C.O. 137/81; same to same 2 Feb., 1782, C.O. 137/82, f. 115; Thos. Townsend to Dalling, 14 Aug., 1782, ibid., f. 251; and Assembly Minutes 20-21 Feb., 1783, *Journal*, VII, pp. 558-60.
34. See mention of these Superintendents in a statement of all the public officers sent home by Lyttelton in April, 1764, C.O. 137/33. Cf. the appropriation clauses of the 1782 *Deficiency Act* (21-12-82) in C.O. 139/37D. The paying of selected white men to live in the negro towns dated from 1739, immediately following the early pacification of the Maroons: see Acts No. 120 [1739] and No. 126 [1740] in vol. 1 of *Acts of Assembly of Jamaica, 1681-1769*.
35. The Governor's right to appoint the Kingston Harbour Master dated only from 1760: prior to that he was chosen by the Kingston Harbour Trust set up in 1744. See Kingston Harbour Acts, 1744 and 1760, in C.O. 139/16 and C.O. 139/21 respectively. Provision was made for the appointment of water bailiffs at Black River and Falmouth in 1782 and 1783 respectively; for the Black River Act see No. 97 of *Acts of Jamaica, 1769-1783*, and for the Martha Brae Act, a copy in C.O. 139/37D.

Chapter XIII

1. *Administration of the Colonies*, p. 54.
2. Barb. Ass. Mins, 18 Feb., 1783, C.O. 31/41.
3. Cunninghame to Germaine, 20 Sept., 1780, C.O. 28/34. It is interesting to note that Cunninghame's complaint was not without effect. Two years later the Secretary of State took steps to ascertain what discrepancies existed between colonial usage and the vice-regal Instructions: see Gov. Shirley to Townshend, 23 Dec., 1782, C.O. 152/63. Compare a very important and instructive report made by Shirley upon the discrepancies which existed between the two so far as the Leeward Islands were concerned, 14 April, 1783, ibid.
4. Germaine to Cunninghame, 16 Nov. 1780, C.O. 28/57.
5. This is, however, a generalisation to which some exceptions can be found. See the more detailed treatment given in Chapters XI and XII.
6. For instance, the commissioners for defence in St. Christopher in 1780, desiring to move some cannon (in this case, imperial stores) from one position to another, had first to secure the consent of the Governor; see Ass. Mins of St. Christopher, 20 Jan., 1780, C.O. 241/17.
7. See Burt to Germaine, 14 Aug., 1779, C.O. 152/59. Cf. Germaine's reply of 14 Nov., following, which defined the relative jurisdictions of the Governor and of the Officer Commanding the regular troops, ibid.
8. As shown in previous chapters, the Assembly (or a committee of the House) passed the account and then addressed the Governor and Council to issue the requisite order upon the treasury for payment; or, in the case of Jamaica, provided for its payment direct from the treasury upon the authority of a suitable appropriation clause inserted in a finance Act.
9. Robinson to the B. of T., 23 April, 1745, C.O. 28/26.
10. Cunninghame to Germaine, 22 Jan., 1781, C.O. 28/58.
11. See Dalling to Germaine, 27 Feb., 1779, C.O. 137/74; and cf. Campbell to the same, 8 Jan., 1782, C.O. 137/82.

12. Campbell to the same, 26 Sept., 1781, C.O. 137/81.
13. Cunninghame to Germaine, 20 Sept., 1780, C.O. 28/34. Governor Edward Trelawny of Jamaica, as early as 1746, had observed the same disposition in the Jamaican Assembly, which, he said, "affected the whole government of the island and to control in everything the two other parts of the legislature." Trelawny to B. of T., 17 Oct., 1746, C.O. 137/24.
14. Governor David Parry's Instructions, 1782, besides conceding the Assembly's right to join in the regulation of all fees, conceded also its right to control all the appointments which had customarily fallen to its lot, and lastly its right to join in the passing of the public accounts and issue of the public money: see Secretary of the Board of Trade to the Lord President of the Council, 27 Aug., 1782, C.O. 28/59.
15. Sometimes the commissioners by the Act or resolve which set them up might be given final authority, but this was comparatively rare.
16. Greene, E. B., *Provincial Governor*, pp. 182-94. Cf. Labaree, *Royal Government in America*, chap. VII.
17. Barbados, of course, did not do this. Her modern institutions are therefore in direct descent from the systems of the past.

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II. DOCUMENTARY MATERIALS

(a) MANUSCRIPT.

By far the most important manuscript materials for this study have been the Colonial Office records preserved in the Public Record Office. First among these have been the volumes of "Sessional Papers" and "Acts", which, taken together, provide a detailed account of the internal governmental progress of each colony, giving both the process and the products of legislative deliberation. Of equal value have been the volumes of "Original Correspondence" passing between the governors, the Board of Trade, and the Secretary of State; together with the complementary "Entry Books" of outgoing correspondence, Secretary of State or Board of Trade, to the individual governors. In the former the governor is found addressing his English superiors upon any thorny problem that confronted him, while in the latter we can generally trace the substance of the Board of Trade's or the Secretary of State's reply. If we wish further to examine how the Board of Trade and the Privy Council came to their decision on any specific problem, we can in most instances trace the record of their deliberations by reference to the appropriate volumes and pages of the *Journal of the Commissioners for Trade and Plantations*, and the *Acts of the Privy Council of England, Colonial Series*. (See list of Printed Documents below.)

Lesser manuscript materials are available in the British Museum, the Bodleian Library, the library of the Royal Commonwealth Society, Trinity College, Dublin, and the office of the Registrar of Deeds, Barbados.

The following table gives a summary of the chief sources consulted, arranged under their appropriate depositories, and with appended notes where necessary.

1. The Public Record Office:

C.O. 1. Colonial Papers, "General Series". Occasional volumes in this class are of value.
C.O. 8. "Acts" of Antigua, vols. 2 to 20 cover the period 1668-1783.
C.O. 9. "Sessional Papers" of Antigua, vols. 1 to 43, 1704-83.
C.O. 28. Barbados "Original Correspondence"—Board of Trade and Secretary of State, vols. 1 to 60, 1689-1783.
C.O. 29. Barbados "Entry Books of Commissions, Instructions, . . . (outgoing) Correspondence, etc.", vols. 1 to 22, 1627-1782.
C.O. 30. "Acts" of Barbados, vols. 1 to 16, 1643-1782.
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C.O. 139. Jamaica: "Acts", vols. 1 to 40, 1662-1784.
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C.O. 152. Leeward Islands: "Original Correspondence"—Board of Trade and Secretary of State, vols. 1 to 63, 1689-1783.
C.O. 153. Leeward Islands: "Entry Books" of Commissions, Instructions, (outgoing) Correspondence, etc., vols. 1-25, 1670-1782.
C.O. 154. Leeward Islands: "Acts". This series comprises fragmentary collections of early Acts from all the component islands. As such it is a useful supplement to the collections already noted. Vols. 1 to 5 cover the period 1644-1703. Vol. 6 contains a fairly comprehensive list of Acts passed in all the separate Leeward Islands from 1668 to 1758, and is thus very useful for reference.
C.O. 155. Leeward Islands: "Sessional Papers". This class contains scattered collections of early minutes of Councils and Assemblies from all islands, and is a useful addition to the separate classes already mentioned. Vols. 1 to 7 cover a period 1680-1730.
C.O. 176. "Acts" of Montserrat, vols. 1 to 8, 1668-1778.
C.O. 177. "Sessional Papers" of Montserrat, vols. 1 to 16, 1704-81.
C.O. 185. "Acts" of Nevis, vols. 1 to 7, 1664-1779.
C.O. 186. "Sessional Papers" of Nevis, vols. 1 to 8, 1721-76.
C.O. 240. "Acts" of St. Christopher, vols. 1 to 13, 1701-81.
C.O. 241. "Sessional Papers" of St. Christopher, vols. 1 to 18, 1704-83.
C.O. 323. "Original Correspondence—Board of Trade." This class is sometimes useful for the discovery of a letter which has been lost from the usual files. Vols. 1 to 33 cover a period from 1689 to 1780.
C.O. 324. Board of Trade "Entry Books of Commissions, Instructions, Petitions, Grants, Orders-in-Council, Warrants, Letters, etc." Series I. This series is similarly useful for tracing an occasional document of this character which may be missing from the regular files. Vols. 1 to 60 cover a period 1662 to 1782.
C.O. 389. Board of Trade "Entry Books of Commissions, Instructions, . . . etc.," Series II. Useful in the same way as the foregoing. Vols. 1 to 59, 1660-1783.
C.O. 391. "Minutes of the Board of Trade". Of great value for tracing Board of Trade action for the years subsequent to those yet covered by the printed *Journals of the Commissioners for Trade and Plantations*, see Printed Documents.

The records of the Chancery are of use only to those who desire to view the original enrolments of Commissions, Grants, and other Letters Patent, passed

under the Great Seal. C. 60/38 and C. 58/4 contain depositions upon the Carlisle-Courteen dispute, which throw light upon the first settlement of Barbados. C. 66/2437 and C. 66/2455 contain the Carlisle patents for the Proprietorship of the Caribee Islands, 1627 and 1628 respectively.

The Treasury papers, though possessing much valuable material for many aspects of colonial history, are of comparatively little value for a constitutional study.

The State Papers Domestic are also of little value, save for an occasional volume of the Interregnum period, (S.P. 25).

2. The British Museum:

These manuscripts have been particularly useful for the period prior to the Restoration, for which the official papers in the Public Record Office are comparatively deficient. The following list indicates the most important of the volumes consulted.

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Stowe MSS. 201, f. 145. Letter from William Lord Willoughby on Barbadian events, 1673.

Egerton MSS. 2395. Contains much valuable material on Governmental as well as other matters connected with the Caribee Islands; chiefly, though not exclusively, for the period 1653-79.

Egerton MSS. 2543, f. 123. "A State of your Majesty's interest in the West Indies," 1662.

Additional MSS. 11411. An out-letter book of Thomas Povey, of great value for the Protectorate and early Restoration periods; especially when used in conjunction with Egerton 2395.

Additional MSS. 12400-12440, 18269-18275, 18959-18963, 21931, 22639, 22676-22678, and 27968, all containing material relating to Jamaica.

Additional MSS. 22129. List of official appointments in the West Indian Colonies, circ. 1780.

Additional MSS. 25120. Letter book of Sir William Coventry (1676-9). containing several letters from Coventry to the governors of Barbados and the Leeward Islands.

Additional MSS. 28949. Paper on the grant of offices to non-residents, circ. 1700.

Additional MSS. 30372. Abstract of the Commissions and Instructions formerly and at this time, 1740, given to the Governors of his Majesty's Plantations in America and the West Indies.

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4. Elsewhere.

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Registrar's Office, Barbados. In this office is still preserved a transcript of the original third volume of the Council Minutes, 7 Feb., 1653/4 to 2 Dec., 1658. The present writer has been fortunate enough to secure a complete typewritten copy of this volume, which is very informative upon the progress of events during these years, thus providing a useful addition to the otherwise meagre sources for this period at our command. This book is now deposited in the Public Record Office London.

(b) PRINTED.

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