FIRST REPORT,

&c. &c. &c.

ADDRESSED TO

THE RIGHT HONOURABLE EARL BATHURST,

&c. &c. &c.

BARBADOS.

In this Island, says the Reporter, his Majesty's Commissioners, Mr. Maddock and myself, in January, 1823, entered upon the performance of the duties with which we were charged; embracing, by virtue of an extension of our original powers, an inquiry into the administration of justice, as well civil, as criminal, in all the islands named in our Commission.[1]

[1] Instructions, No. 2.

Our inquiries were first directed to the state of the law of this Colony, which, so far as it is local, is to be found in the statutes of the island. In common with every person in the colony, from the judges who preside and the advocates who practise in the different courts, to the attornies, the suitors, and the public in general, we might have experienced great difficulty in procuring this information, for reasons which will be hereafter explained,

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but for the prompt and liberal assistance of the [2]governor, and the ready attention of the island [3]secretary, who is the depositary of the acts of the colonial legislature.

[2] Sir Harry Warde.

[3] Mr. Husbands.

LAWS IN FORCE.

The laws of the mother country acknowledged, and in force, here, are,

The Common Law of England.

First, The common law of England:

Acts of Parliament.

Secondly, Such acts of Parliament as passed before the settlement of the island, and are applicable to its condition. Under the qualification contained in the last part of the rule, many entire exceptions have been admitted. Of this, the Bankrupt and Poor laws, the laws of Police, Tithes, and the [4]Mortmain Acts, furnish apt and familiar examples. A further and very striking illustration of the principle upon which particular laws have been excluded, will be found in the preamble to No. 141, Hall's Law of Barbados; "An Act to quiet "the minds of the inhabitants of this island against the "terrors and apprehensions they lie under of a spiritual "court."—"Whereas an attempt has been lately made "to erect a spiritual court in this island: And whereas "such court will *clash with the municipal laws* of this "island, *embarrass* the government, *vex* and torment the "gentry, depauperate the substantial freeholders, and "ruin the common people, now, for quieting the minds, "Be it enacted, &c. &c."

[4] The Attorney-General *v.* Stuart, 2 Merivale's Reports, 143.

Of acts, passed subsequently to its settlement, such, only, are considered to affect the colony, as have the island expressly named or virtually included in them; as is the case where laws are declared to extend, besides Barbados "to the West Indies," or "to the colonies." And all navigation acts, and acts of revenue and trade, and acts respecting shipping, are obligatory; though the colonies are not named in them.

Acts of parliament altering other acts, in force in the colonies, are considered as themselves applying there.

ACTS OF ASSEMBLY.

It is said to be a necessary qualification of acts of assembly that they shall be *reasonable* in themselves; and it is always a restriction that they shall not be *contrary* to

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the laws of England. Acts repugnant to the laws of England, which refer to the Plantations, are absolutely void.[5]

[5] 7 & 8 W. 3. c. 22. s. 9.

Acts passed in the island, without a suspending clause, immediately that they are assented to by the governor, become and continue in force, till notice is given of their being disallowed. I am aware that a different doctrine has been advanced and ascribed to professional persons, but I could never learn, that it was seriously entertained, by any of the colonial lawyers, most competent from their familiarity with the subject, to pronounce an authoritative opinion. The question, however, was much agitated in [6]several of the colonies about the period of our arrival. Unfortunately, it was at that time mixed up with local politics, and resentments of the most perishable kind. Through these media it arrived to the Commissioners, completely disguised and distorted, so as to render it matter of *no small* difficulty to discover the simple and abstract point alone deserving their dispassionate consideration. At a future period I shall have occasion to return to the subject, and notice a representation we received; the inquiry we instituted; and the results.

[6] In Barbados and Bermuda principally.

EDITIONS OF.

There are two printed collections of the acts of the legislature of Barbados: "Hall's Laws," published in one volume folio, in 1764; and "Moore's Laws," edited in 1800, in one volume octavo; both incomplete, and the former, in a remarkable degree, inaccurate and defective. There is no later edition of their laws, and the acts passed, since the year 1800, remain in manuscript.

It is scarcely necessary to observe, that this state of the Statute Law of a country must be very inconvenient. The chief justice, a gentleman of strict integrity, and who had the manliness and candour to acknowledge in his answers to the Commissioners, that he had not been bred to the profession, and was no lawyer, made upon this subject a very just and spirited remark: "The state "of the modern Statute Law of the colony was very dis- "tressing; there were sixty-seven laws in manuscript, "and in consequence they knew nothing about them;" he added, however, "that an Act passed, for printing

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"these laws, had not been confirmed at home." On inquiry we learnt, that the act in question (for compiling and publishing a perfect edition of the laws of Barbados) was not disallowed on account of any disapprobation of the general principle. On the contrary, it is understood that his Majesty's Government were favourably disposed to promote such a publication. But it would appear that a particular clause in the act was deemed objectionable, as tending to destroy all security for the authenticity or correctness of the intended work; and it seems to have been apprehended, that, by confirming the act in the form in which it was transmitted, not only would an opportunity have been afforded for introducing material errors into the recognized edition of the Barbados Statute Book, but a precedent would have been established, of dangerous application, in the case of other colonies.

MANUSCRIPT.

Upon further inquiry, and after a painful perusal of all the statutes of the island, the Commissioners were satisfied that the manuscript acts or *laws* not in print (and of which *ignorantia neminem excusat*,) amounted not to sixty-seven acts, as the chief justice had supposed, but to 247! All these, public, acts the judges (and they no lawyers,) are *ex officio* bound to know; though not printed, or, it will afterwards appear, easily, referred to.

The acts, themselves are deposited in the colonial secretary's office, and copies are directed to be kept, in the parish churches. Persons desirous of consulting them can only do so, by applying, at the secretary's office, or to the clerk of the vestry. Upon these points, the Commissioners addressed several questions to the attorney and solicitor-general, both gentlemen of great talent and long experience in colonial affairs. The attorney-general said, "they may apply at the secretary's "office, but I do not think he is bound to let them con-"sult the acts." The solicitor-general observed, "I doubt "whether you can insist, as a right, on seeing those "kept in the parish church." The attorney-general believed "the vestry-clerk must give a copy on payment of

"5*s*." Supposing the latter opinion to be correct, and that a party can procure a copy, of a specific act, from the parish church, on payment of 5*s*. still *such* copy will not be available in evidence. And, though it is quite unquestionable, as a general rule, that the bench are, judicially, bound to know every public act, which they cannot consult, still in this particular case, whether from the notoriety of the fact bearing down the presumption of law, or from the intrinsic absurdity of the supposition itself, or from loose habits and careless practice, which creep in, where the judges are not lawyers,—the course of the courts, where one of these statutes has been at all insisted on, has, always, been in direct opposition to the maxim of the books; and either the secretary is called upon to produce the original act, or an attested copy, under his hand, is received. The attorney-general states that no other evidence, than the former, would be "allowed." The chief justice and the solicitor-general say that the latter is "generally admitted." Such is the obscurity,—uncertainty,—contradiction,—confusion and error, occasioned by neglecting the ordinary and most obvious method of notifying the commands of the legislature!

Hall's Laws are "made evidence," and the exclusive right (copyright) reserved to him, under penalties recoverable, like servants' wages, before a single justice, on evidence of one witness, or confession of the parties. The same of Moore's edition[7]. Where there is occasion to give a manuscript act in evidence an examined copy should be admitted, as in England. Where the terms or *wording* of the act are the matter in dispute, the original record, I apprehend, must be produced. But the laws not collected and published by authority, with a clause in the act making the printed volume evidence, ought to be few, and those in print—and such, the judges must be generally taken to know, without the necessity of pleading or producing them.

[7] No. 67, Moore's Laws.

A fee is paid for consulting the acts at the secretary's office, and to persons requiring a transcript of the whole

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or any part of a law, a charge is made in proportion to the folios for copying.

The first act for printing the laws (Hall's Laws, No. 100,) assigns the reasons for the measure, clearly and cogently, in the following remarkable and very *emphatic* preamble :—" Forasmuch as nothing more conduceth to " the well-being, tranquillity and benefit of any place and " people, than the preservation of their laws, and the " knowledge of them, and daily experience having ma- " nifested innumerable inconveniences that this island " hath suffered for so many years past, by not having the " laws by which they are to be regulated and governed, " their lives preserved, and their estates secured to them " and their posterity made public and open to the ready " view of all the inhabitants, for want of which many " persons of great authority in this government, not being " acquainted with all the laws that are kept in offices, or " if known not to be had on sudden occasions, for want " of which also it often happens in the multitudes of " copies which are taken from the offices, great variations " and alterations are made by heedless and unskilful " transcribers, and these copies being obtruded upon " trials, as authentic, have been the cause of unjust and " illegal determinations; and forasmuch as all our laws " on record have often been in great danger to have been " wholly lost, both by hurricane and fire; be it enacted, " &c. &c."

LAWS, HISTORY OF.

From the act No. 204, Hall's Laws, it would naturally be inferred that some steps were taken to carry into effect the revision of the laws, which was at that time felt to be necessary, and which formed part of the instructions carried out by Governor Grenville in 1752. Nothing material, however, appears to have been done, in prosecution of this object. The first thirty-six laws, in Hall's edition, (with one exception, No. 35,) were collected by Commissioners appointed by Lord Willoughby, and afterwards established by an act of the island. The explanatory return (for such it is called) of the Commissioners is contained in the words following:—" We the com-

" mittee appointed for the compiling of the laws, having " caused them to be collected and transcribed, as appears " by a writing under our hands, expressed in the page " preceding the first law entered in this book, and are " therein expressed, and be comprehended in one hun- " dred and fifty-three sheets of paper, which being now " fairly ingrossed in this book, do appear to be fifty-eight " laws, and are comprehended in the fifty-one next pre- " ceding pages. And to the end that our declaration " may be rightly understood, in regard that relateth to " the one hundred and fifty-three sheets of paper wherein " the laws were first digested, we have thought good " here to insert this present explanation. Given under " our hands the 14th day of November 1667.

" *Philip Bell,*
" *Constant Sylvester.*"

This document is inserted in Hall, and is certainly worth preserving for its admirable perspicuity and legal precision. Oldmixon says[s], " It is well for the inhabit- " ants of this island, that the laws are more intelligible, " than this return ;" upon which their editor, Hall, with unwonted smartness, observes, " If he had read the laws, " he would not have said this."

[s] Brit. Empire in America, vol. 2, p. 28.

I have already alluded to a communication made to the Commissioners, upon the subject of their laws, enacted by the colonial legislature, and awaiting the expression of His Majesty's pleasure. The representation we received, was to the following effect :—" That great incon- " venience was felt for want of a certain rule, by which " it could be clearly known, *what* acts remain in force, " or *when* acts cease to be binding; when acts are al- " lowed at home, and when disapproved. The order in " council of 1800 (the last upon the subject) was said to " be so ambiguous, that lawyers, here, had differed from " each other, and from themselves, upon its construc- " tion."

Minutes, March 11, 1823

DURATION OF.

The facts, upon which this statement proceeded, were positively denied; the opinion it tends to countenance, I consider erroneous; the grievances, it represents, are either unfounded, or greatly exaggerated. But excusing

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a slight taint of party feeling, and a little spleen against the lawyers, the motives which caused the communication were sufficiently respectable, and the object it had in view, of procuring a clear and precise rule, upon a subject of the greatest importance to the colonies, such, as in any light we could view it, it was impossible to disapprove.

The subject, it will be perceived, is not trivial, and deserves elucidation, on constitutional as well as legal grounds; though quite distinct from any case of complaint or crimination. As the learning it embraces is very useful, and is not generally diffused, it may be advantageous to state the information we collected, somewhat fully.

On the arrival, at the colonial department, of acts passed by the governor, council, and assembly, of any of his Majesty's colonies in the West Indies, the course pursued is as follows:

The acts of the session are referred by the secretary of state to the counsel for the colonial department, who is required to "*report his opinion upon them in point of* "*law.*" By this old and established form of expression is understood to be meant, that the counsel is to report, whether the acts, respectively, are such as, consistently with his commission and instructions, the governor was authorized to pass; whether, in the language of the statute 7 & 8 Wm. 3. c. 22. s. 9, it is repugnant to any law made in this kingdom, so far as such law may mention or refer to the plantations; and whether the act is so framed as to give full and entire effect to the purposes with which the colonial legislature may have passed it?

In pursuance of this reference, a report is made, to the secretary of state, by the counsel to his department. The acts, accompanied by this report, are then transmitted to the president of the council, with a letter from the secretary of state, desiring his lordship to lay the acts and the report before the King in council, for his Majesty's consideration.

At the first board of council, which is held after receiving this communication, the acts are referred to the

lords of the committee of council for the affairs of trade and plantations, who are directed to report to the King in council, their opinion what proceedings it may be proper to take in relation to them. It is understood that the committee of trade proceed to select, from the acts thus referred to them, all such as present any point of peculiar novelty or importance, or as give rise to any question of legal difficulty. The acts thus selected, together with all private acts, are referred by their Lordships to His Majesty's attorney and solicitor-general for their opinion. When the report of the law-officers of the Crown is obtained, the lords of the committee of trade enter into the consideration of all the acts of the session, and it is understood to be a settled rule, that, in their deliberations upon this subject, they are assisted by the Secretary of State for the colonies, in his capacity of a member of the committee.

A report, from the committee of trade, is then addressed to the King in council, and in this report all the acts of the session of the colonial assembly are classed under three heads; First, if it is thought proper to *disallow* any act, the report contains a full statement of the grounds of objection, which may exist to it; secondly, if any of the acts relate to measures of general and peculiar importance and interest, it is recommended that a special order in council should pass for the *confirmation* of them; thirdly, the great majority of the acts of each year being usually little more than business of routine and continual recurrence, their Lordships are in the habit of advising, that—such acts "*should be left to their operation.*"

If this Report is adopted by the King in council, orders are drawn up, for such of the acts, as are comprised in the two first-mentioned classes. No colonial act can be disallowed, except by a regular order of the King in council.

The clerk of the council then addresses, to the secretary of state for the colonies, a letter, announcing to him the decision which has been adopted, respecting all the acts of the session, and transmitting to him all the origi-

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nal orders in council for allowing or disallowing any particular acts.

The secretary of state communicates the result to the governor of the colony, and at the same time conveys to him the original orders in council. A list is also made out, of the acts which have neither been confirmed nor disallowed, with an intimation that *they* are to be left to their operation.

From the preceding statement, it appears, that, comparatively few, of the statutes passed in the West Indies, receive either the direct confirmation or disallowance of the King. It is clearly understood, that, so long as this prerogative is not exercised, the act continues in force, under the qualified assent, which is given by the governor in the colony itself, on behalf of the King. It is also received as a maxim, that the King may, at any time, however remote, exercise his prerogative of disallowing any colonial act, which he has not once confirmed by any order in council. This, however, may be numbered among those constitutional powers of the Crown, which have been dormant, for a long series of years, and which would not be called into action, except on some extreme and urgent occasion. It is believed, that no instance has occurred, in modern times, of the disallowance of any colonial statute, after the notification to the governor, that it "would be left to its operation."

It is deserving notice, that reference was made to an order in council of the 15th January 1800; by which it is declared, that "in all cases when his Majesty's con- "firmation shall be necessary, to give validity and effect "to any act passed by the legislature of any of his Ma- "jesty's colonies or plantations,—unless his Majesty's "confirmation thereof shall be obtained, within three "years, from the passing of such act, in any of the said "colonies or plantations, such act shall be considered as "disallowed." This order has been, sometimes, supposed to lay down a rule, applicable to all descriptions of colonial statutes. It is however apparent, from the words of the order itself, from the reason of the case, and from the understanding of the public offices in England,