

THE ADMINISTRATION OF JUSTICE.

By G. RÔNDEAUX DE COURCY, Barrister-at-Law.



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IT was in the course of those glorious times in the history of France, when the Indian Ocean resounded with the names of Suffren, d'Estaing, La Motte Piquet, d'Entrecasteaux and their emulators, that du Fresne, in conformity with Royal instructions, took possession, on September 20th, 1715, of Mauritius, and gave it the name of Ile de France. Some time afterwards du Fougerai-Garnier hoisted the fleur-de-lys over the newly-occupied territory, and also erected a cross whereon was carved the coat-of-arms of France, with the following inscription—" *Lilia fixa Crucis capiti Mirare sacratae Ne stupeas jubet hic Gallia stare Crucem,*" reminiscent of the proud title of *Fille Aînée de l'Eglise* which France had achieved by centuries of chivalry and heroism.

In 1722 de Nyon, under a recent appointment, assumed the government of the island, and ruled with a free hand until the following year, when a Council was instituted to assist the Governor. That Council was styled *Conseil Provincial*; its powers were legislative, judicial, and administrative, but only the judicial powers will be dealt with here.

Thenceforth l'Ile de France was possessed of a Court of Justice, and out of that first judicial institution gradually grew a system which, being subsequently transformed and invested with powers similar to those exercised by certain of the Courts of England, has developed into our present judicature.

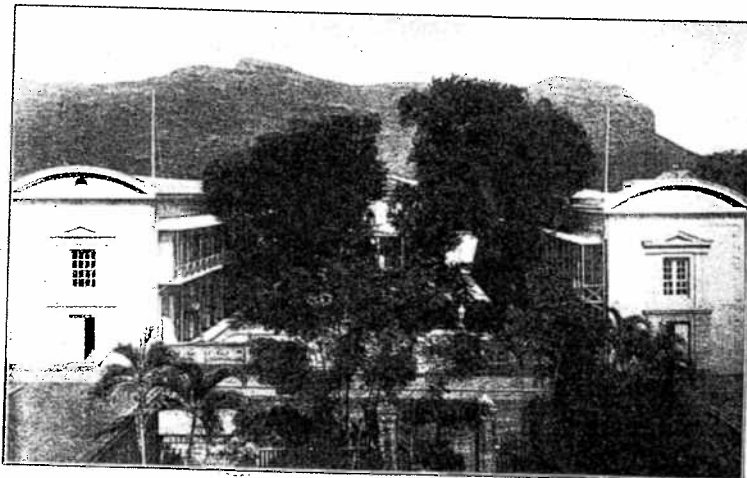
The Court exercised full original jurisdiction in criminal as well as civil matters. The enactments which created the *Conseil Provincial* also established in the neighbouring island of Bourbon a *Conseil Supérieur*, and that Court was given appellate jurisdiction over the *Conseil Provincial de l'Isle de France*.

In 1734 the *Conseil Provincial* was abolished, and a *Conseil Supérieur* established, independent of the *Conseil Supérieur* of Bourbon, with full original and final jurisdiction over l'Isle de France.

In 1738 the judgments delivered in the Colony were made subject to a right of appeal, by way of *pourvoi*, before the *Cour de Cassation*.

In 1766 another Court was instituted to take cognizance of matters concerning "concessions" (grants of land and of water from rivers). It was given the name of *Tribunal Terrier*. In the same year the *Conseil Supérieur de l'Isle de France* was abolished. It was replaced by a *Conseil Supérieur* differing from the former Court of the same name, and was invested with a restricted original jurisdiction.

In 1771 the *Conseil Supérieur* was also abolished, and another Court of original jurisdiction, criminal and civil, was established under the name of *Cour de Juridiction Royale*; a *Conseil Supérieur* was created to sit as a Court of Appeal over the former Court.



THE SUPREME COURT, FORT LOUIS.

In 1776 Admiralty jurisdiction was granted to the *Cour de Jurisdiction Royale*.

In 1791 after the overthrow of the French Government, the *Conseil Supérieur* and *Cour de Jurisdiction Royale* were abolished. Magistrates (*Juges de Paix*) were appointed; they exercised a limited jurisdiction, both civil and criminal.

During the period which elapsed between the constitution of the *République (Une et Indivisible)* and the eleventh year of the revolutionary calendar (1803), extraordinary agitation was manifested in the contrivance of substitutes for the Courts of Justice and other institutions. Several of those innovations were in the form of unprecedented tribunals and committees—e.g., *Tribunaux de Famille*, *Conseil des Trois*, *Comité du Salut Public*. As regards the last-named improvement on the evolution of the national traditions, it is noteworthy that the *Comité* did not, in spite of the existence of the local *Club des Jacobins* and *Club des Cordeliers*, follow suit with its cognomen of France. Indeed, during the Reign of Terror, only one revolutionary murder was committed in *l'Île de France*. No Mauritian, thank God, participated in that deed. digression. An officer, Comte moned before the *Assemblée* permanently within the walls of



MR. JUSTICE FURCY
ALFRED HERCHENRODER,
Chief Judge:

The episode deserves a short de Macnemara, had been summoned to the Church. As he was wending his way thence to the barracks under an escort of soldiers, the procession came up to a *lanterne*, the sight of which reminded Macnemara of the methods which of late had been obtaining in France. Fearing a similar fate, he endeavoured to escape, but was pursued by several soldiers, who shot him dead, after his pistol, with which he

had endeavoured to defend himself, had missed fire. His head was severed from his body, and promenaded on a pike through the streets, to the disgust and horror of the population. His mangled corpse was buried by a sailor.

In 1803, good order having been restored in France, the office of *Juge de Paix* and the various tribunals created during the revolutionary period were abolished at *l'Île de France* and the *Tribunal Terrier* was re-established, as well as the *Cour de Jurisdiction Royale* and *Conseil Supérieur*, the former under the appellation of *Tribunal de Première Instance*, the latter under that of *Tribunal d'Appel*.

The *Tribunal de Première Instance* was granted original jurisdiction in all cases, civil, commercial, admiralty, criminal and



MR. JUSTICE CHARLES S.
DAVSON, B.A., LL.B.,
Puisne Judge.



MR. JUSTICE THOS. WAGSTAFFE
HAYCRAFT, B.A.,
Puisne Judge.

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police, whilst the *Tribunal d'Appel* was invested with appellate jurisdiction over the former.

In 1808 the *Tribunal d'Appel* was styled *Cour d'Appel*. Those were, with the exception of several petty courts which it is unnecessary to mention here, the judicial institutions which were in existence in 1810, when the island capitulated to the British.

On December 28th, 1810, Sir Robert Farquhar, the first Governor appointed by the British Crown, proclaimed that the Courts would continue in existence and exercise, *durante bene placito*, the same jurisdiction as was then in vogue. The only alteration which the cession effected in the administration of justice was that the judgments of the Courts of Mauritius were ordered to be pronounced in the name of His Britannic

Majesty, and that appeals from Mauritius were thenceforth no longer to be made to the *Cour de Cassation*, of France, but to the King in Council. In 1812 the denomination of the island was changed to "Mauritius." In 1814, in terms of the Treaty of Paris, Mauritius and its full right and ownership by His Britannic Majesty.

Admiralty jurisdiction had continued. *Tribunal de Première Instance*. Admiralty Court was established. *Terrier* was abolished and its



The Hon. ETIENNE KOENIG,
Procureur and Advocate-General.

dependencies were ceded in Most Christian Majesty to His

Between 1803 and 1814 continued to be exercised by the Vice-

In the latter year a Vice-*Tribunal* jurisdiction transferred to the Governor in Executive Council. The jurisdiction of the other Courts remained unchanged up to 1850.

Then the system of judiciary in the island underwent a complete transformation. The *Tribunal de Première Instance* was abolished. Subject always to a right of appeal from its decisions to the Privy Council, the *Cour d'Appel* was styled "The Supreme Court of the Colony of Mauritius." Its appellate jurisdiction, as then existing, was withdrawn, and it was invested with an original, as well as with an appellate, jurisdiction, which, with subsequent extensions and modifications, the Court has preserved to this day and still exercises.

JURISDICTION OF THE SUPREME COURT.

Since 1850 the criminal side of the Court has borne the style of "Court of Assizes." It is the superior Court of original criminal jurisdiction, and is held by one or more judges of the Supreme Court; questions of fact are decided by the jury. Four



L. A. HUGUES,
Master and Registrar of the Supreme
Court, Acting Puisne Judge.



E. SERRET,
Additional Substitute Procureur
and Advocate-General.

sessions are held yearly—once every three months from January 1st, or oftener if found necessary.

The civil side has been invested, ever since 1850, with all the powers, authority and jurisdiction of the then existing Court of Queen's Bench and with equitable jurisdiction. The Court consists of a Chief Judge and two or more Puisne Judges, and at public sittings is composed of not less than two judges. The Court has the discretion of ordering that any case be heard by a jury. The judges may also refer, for decision, to the Master any such cases as they may be advised.

Divorce suits are within the jurisdiction of the Supreme Court, so also are suits in judicial separation.

The Court likewise exercises Admiralty jurisdiction, that jurisdiction having been transferred from the Vice-Admiralty Court to the Supreme Court in 1863. The Court, when exercising Admiralty jurisdiction, bears the title of "Colonial Court of Admiralty," and is presided over by the Chief Judge. The judgments of the Court are liable to appeal before the King in Council.

The Court is further in which is peculiar to Mauritius jurisdiction which may be said rivers and streams of the Colony property. In 1872 the jurisdiction was withdrawn and vested in inferior ordinary tribunals, the



The Hon. G. A. RITTER, C.M.G.,
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HENRY BERTIN,
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vested with "Land" jurisdiction, of all other British Colonies—a to be *sui similis*. In 1863 the were declared to be public tion of the Governor in Council the Supreme Court and the Governor in Council retaining only the power of deciding certain questions for the public benefit.

The Court has a Bankruptcy Division. A Court of Bankruptcy, to be held by any one of the judges of the Supreme Court, had been constituted in 1853.

In 1887 the Master of the Supreme Court was made Judge of the Bankruptcy Court. In 1899 the Bankruptcy Division of the Supreme Court was created, and the Master ceased to exercise bankruptcy jurisdiction, which was vested in the judges of the Supreme Court, any one judge sitting alone. The Bankruptcy Division is further vested with jurisdiction in insolvency and the winding-up of companies, which jurisdiction had previously been exercised by the Master.

The judges also exercise a jurisdiction in Chambers. The Judge in Chambers has power to finally dispose of certain matters specified by law, with the discretion of referring the case to the Court. He can grant a Writ of Injunction, but the Court is empowered, on motion, to dissolve or modify the writ. The Judge in Chambers can decide all matters which were



LEON HUET DE FROBERVILLE,
Acting Chief Clerk of the Supreme
Court.

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JACQUES GANACHAUD,
Attorney-at-Law.

Court of Admiralty, the Supreme Court of inferior jurisdiction, of Magistrates, the Marine Court for Mauritius itself. As regards Court in Rodrigues, and two a rule, to exercise jurisdiction [Since the foregoing was written an enactment (Ordinance 36 of 1912), affecting the Supreme Court, has been unexpectedly put into force by proclamation. By that statute claims not exceeding Rs. 3,000, suits for divorce or judicial separation, motions and rules returnable, will in future be susceptible, at the discretion of the judges, of being heard and determined by one judge sitting alone. In this connection it may be as well to observe that in 1850 there was created a branch of the Supreme Court, subsequently known as the "Bail Court," which was composed of one judge, and exercised a limited original, as well as an affiliate, jurisdiction that was abolished in 1881.]

INFERIOR COURTS OF MAURITIUS.

The District Courts are Courts of Record. They were created in 1850, and their jurisdiction has been modified by subsequent enactments. They are presided over by a District Magistrate, who has similar powers, privileges and functions, and exercises the same jurisdiction under any Act of Parliament extending to the Colony as those of a Justice of the Peace, or

formerly settled in Chambers by the President of the *Cour d'Appel* or the President of the *Cour de Première Instance*, and can give any order which was previously within the jurisdiction of either of them. The judge of the Bankruptcy Division may exercise in Chambers the whole or any part of his jurisdiction in bankruptcy, except in certain matters specified.

The Master also holds a Court, and the Master's Court has original jurisdiction in matters concerning probate of wills, judicial sales, and in certain other matters. The probate of wills, mentioned in the Charter of Justice, is not that which is known in English law under the same name. The Court, in accordance with its statutory powers, sits as a Court of Appeal over the following tribunals:—The Bankruptcy Division, the Master's Court, the District Courts, the Benches of Magistrates, the Stipendiary Courts, the Supreme Court of Seychelles.

As regards Seychelles cases, the right of review by Writ of Certiorari was expressly withdrawn in 1903, when Seychelles was made a separate Colony and the Supreme Court of Seychelles created.

When sitting as Colonial Court hears appeals from certain Court. There also exist the District Courts, the Benches and the Stipendiary Courts the Dependencies, there is a magistrates are appointed, as over the Oil Islands.



EDGAR DE ROBILLARD,
Notary Public.



PAUL BAISSAC,
Notary Public.

two Justices sitting together. The law expressly provides that the Magistrates shall exercise such jurisdiction in connection with the Merchant Shipping Act of 1894 (57 and 58 Vict., c. 60). The Magistrate also decides certain questions formerly within the jurisdiction of the Land Court.

The District Courts exercise original jurisdiction, both civil and criminal. The Magistrate has, in certain cases specified in the law, the powers originally granted to the *Juge de Paix*. He exercises jurisdiction over civil claims of minor pecuniary importance, but certain matters are expressly excluded from his jurisdiction.

The Court exercises summary jurisdiction over certain minor criminal offences. The District Magistrate also holds preliminary inquiries into crimes over which he has no jurisdiction, and is also invested with certain other powers defined by law; such, for instance, as the investigation of cases of death by violence.

At Port Louis the District Court sits in three "Divisions" The First Division hears civil, and the two others criminal matters, the Magistrate for the Third Division trying offences of a minor degree, and acting, in addition, as Police Magistrate. He is also commissioned as Stipendiary Magistrate for Port Louis. As Police Magistrate the jurisdiction which had been Tribunal of the Capital, when 1860 the Municipal Tribunal transferred to the Police Magistrate for Port Louis. The Bench of District Magistrates sitting to an original criminal jurisdiction the Court of Assizes and the District Magistrate sitting

The Benches of District Magistrates sitting to an original criminal jurisdiction the Court of Assizes and the District Magistrate sitting

As regards the Marine Court, a Marine Board was of investigating cases of wrecks ships. In 1902 the jurisdiction Court, which was composed of Division of the District Court of than two "assessors" possessing the Magistrate sitting alone was the Court, and his powers the jurisdiction extends to ship-incompetency or misconduct on or engineers of ships, in certificate.

The Magistrates for the granted concurrent jurisdiction.

a preliminary inquiry may be held, and the Court holds that inquiry with the assistance of one or more assessors, who must be experts possessing specific qualifications.

The Stipendiary Courts have existed on their present footing since Ordinance 12 of 1878 (The Labour Law) was passed, remodelling the former law as to the relationship between employer and servant. Stipendiary Magistrates had been appointed ever since the Order in Council of 7th September, 1838. These are Courts of petty jurisdiction applying the Labour Law, and are mostly engaged in punishing indentured labourers for breaches of their contracts with their masters.



L. A. AIMÉ DUVIVIER,
Custodian of the Archives.

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Second and Third Divisions are On the occurrence of a casualty

with the assistance of one or

COURTS OF THE DEPENDENCIES.

Most of the Dependencies were occupied between 1742 and 1758. The original jurisdiction of the then existing Courts extended to them until special enactments were passed to provide them with Courts of inferior original jurisdiction. In 1814, when Mauritius was ceded to the British Crown, it was so ceded with its Dependencies.

As regards Rodrigues, a Judicial and Police Establishment was created there in 1843. In 1866 the

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Police Magistrate of Rodrigues was invested with powers similar to those of the District Magistrates of Mauritius, as their jurisdiction then existed and under certain reservations.

In 1883 certain additional powers, resembling those of notaries public, were conferred on the Magistrate. He also acts as Civil Status Officer. In 1890 the Police Magistrate's appellation was converted into that of Magistrate.

As regards the Oil Islands, His Excellency the Governor may appoint two Magistrates for them, and in special circumstances three. These Magistrates are to visit the islands at such times as they are requested to do so by the Procureur-General, and cumulate the powers and authority of the District and Stipendiary Magistrates of Mauritius, subject to the modifications set forth in the law. They may exercise their jurisdiction in Port Louis, and, in the event of impediment, the Magistrates for Port Louis are empowered to act in their stead. Their jurisdiction is final, and an appeal lies only on an *ex parte* order of a Judge in Chambers that a question of law is involved in the issue which "deserves and requires" to be considered by "a higher tribunal"—an expression understood to designate the Supreme Court of Mauritius.

DISTRICTS OF MAURITIUS.

For administrative and political purposes Mauritius is divided into nine districts, the names of which are given below together with the principal towns and villages, that in which the Courthouse is situated being printed in italics.

- PORT LOUIS, 16½ sq. miles—*Port Louis*, Grand River, Roche Bois, Vallée des Prêtres. (10,560 acres.)
 PAMPLEMOUSSES, 69 sq. miles—*Pamplemousses*, Long Mountain, Pieter Both, Callebasses River, Piton, Bois Rouge, Mapou, Tombeau, l'Arsenal, Pointe aux Piments, Trou aux Biches. (44,160 acres.)
 RIVIERE DU REMPART, 57 sq. miles—*Poudre d'Or*, Bois Rouge, Grand Baie, Mapou, Piton, Plaines St. Cloud, Rivière du Rempart, Plaines des Roches. (36,480 acres.)
 FLACQ, 115 sq. miles—*Flacq*, Mares aux Lubines, Quatre Cocos, Trou d'Eau Douce, Rivière Sèche, Mare Fougères, Trois Ilots, Camp de Masque. (73,600 acres.)
 GRAND PORT, 100½ sq. miles—*Mahébourg*, Mare d'Albert, Plein Bois, Mare Tabac, Cent Goulettes, Rivière La Chau, Rivère des Créoles, Les Anses. (64,320 acres.)
 SAVANNE, 94½ sq. miles—*Souillac*, Grande Savanne, Petite Savanne, Jacotet. (60,480 acres.)
 PLAINES WILHEMS, 78½ sq. miles—*Rose Hill* and *Curepipe*, Bas du Quartier, Terre Rouge, Beau Bassin, Quartre Bornes, Phoenix, Le Bassin, Vacoas, Mesnil. (50,240 acres.)
 MOKA, 89 sq. miles—*Moka*, Les Pailles, Terre Rouge, Quartier Militaire, St. Pierre. (56,960 acres.)
 BLACK RIVER, 100 sq. miles—*Bambous*, Petite Rivière, Plaines St. Pierre, Tamarin, Black River, Coteau Rafin, Chamarel, Gorges du Cap. (64,000 acres.)

In the areas given above the following islands are included:—

PORT LOUIS.		RIVIÈRE DU REMPART.		GRAND PORT.		BLACK RIVER.	
	Acres.		Acres.		Acres.		Acres.
Flat Island	626	Round Island	417	Mouchoir Rouge	1	Ilot Fourneaux	31
Gabriel Island	104	Serpent Island	78	Ile aux Aigrettes	61	Ilot Bénitiers	125
Pigeon Rock Island	2	Gunner's Quoin Island	188	Ile de la Passe	5	Ilot Malais	3
Barkly Island	3	Ile d'Ambre and Pointe Bernache	339	Ile Vacoas	2	Ilot Fortier	16
Tonneliers Island	60			Ile aux Fouquets	8		
			1,022	Ile aux Fous	1		
	795			Ile Marianne	10		
				Ile des deux Cocos	10		175
		FLACQ.		Ile Brocus and Lafond	39		
			Acres.				
		Ile aux Cerfs	323				

CHIEF JUDGES AND COMMISSARIES OF JUSTICE from 1814 to 1913.

George Smith	30th October	1814	Sir E. P. J. Leclézio	22nd November	1883
Edward Berens Blackburn	10th January	1824	F. T. Piggott— <i>acting</i>	7th April	1895
James Wilson	1st October	1835	Sir E. P. J. Leclézio	25th May	1897
Sir J. Edward Remono— <i>acting</i>			L. V. Delafaye	30th April	1898
6th March to 20th June and 1st November, 1858, to	20th August	1860	Sir L. V. Delafaye	1st December	1899
Sir Stevenson Villiers Surtees— <i>acting</i>	31st January	1857	F. C. Moncrieff— <i>acting</i>	16th February	1900
Sir Charles Farquhar Shand	30th May	1860	Ernest Didier St. Amand— <i>acting</i>	24th April	1900
Sir Nicolas Gustave Bestel— <i>acting</i>			Richard Myles Brown— <i>acting</i>	31st August	1906
—19th January, 1868, to 4th June and April, 1875, to 6th June, 1876, and 11th September, 1878, to	31st August	1879	Louis Arthur Thibaud— <i>acting</i>	5th October	1908
Sir Adam Gib Ellis	1st September	1879	Richard Myles Brown— <i>acting</i>	23rd October	1908
			Furcy Alfred Herchenroder, K.C.		
			— <i>acting</i>	2nd September	1912
			Sir L. V. Delafaye, K.C.	12th November	1912
			Furcy Alfred Herchenroder, K.C.	1st January	1913