

Bench and Bar in Malta

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THE Malta Royal Commission 1931, in its Report presented to the British Parliament in January 1932, had recommended "that the appointment of His Majesty's Judges in Malta should be made a reserved matter in the Constitution (which was to be restored to the Maltese people), and taken out of the province of the Maltese Ministry." It also suggested "that the appointments should not necessarily be confined to men educated at the University of Malta or to Maltese by birth. Although a wider field of selection might not be drawn upon, it may be desirable that it should exist, in case it should become necessary to strengthen the prestige and efficiency of the law in Malta" (p. 167).

When these recommendations were made public, the Malta Chamber of Advocates entered a strong protest against this suggestion which was uncalled for and contrary to the best traditions of the Maltese Bench and Bar. A reasoned memorandum was submitted to the Secretary of State for the Colonies who, through His Excellency the Governor, replied as follows:—

"In the concluding sentences of the Memorandum, the Chamber of Advocates refer to the suggestion made by the Royal Commission that judicial appointments in the Island should not in the future be confined to Maltese. The Chamber will now be aware that His Majesty's Government, in accepting the recommendations of the Commissioners, have made an exception with regard to this particular proposal, and have decided **not** to adopt it.

"The Secretary of State wishes your Chamber to be assured in this connection that he feels complete confidence that Malta will be able to supply to the Bench in future Judges fully competent to maintain the traditions set by the gentlemen whose names are mentioned in the Memorandum."

The legal profession and its exponent and mouthpiece, the Chamber of Advocates, has always held a very important position in Malta and the opinion of the Bar has often been a weighty

element in the making of judicial appointments (though these appointments are actually made by the Government), and this all the more because judges are generally appointed from the active members of the Bar.

The opinion of the Bar may carry weight in a matter of greater importance; it may help sometimes to make the law itself. The pleading of a barrister of high standing in his profession, on some new point of law, may help to determine an important decision, which afterwards becomes a precedent and sometimes is incorporated in law.

There is also great interconnection between law and politics in Malta as there is in England; in Malta it was more so when representative institutions were denied to the Maltese Nation. The influence of lawyers in Parliament produces a legal conduct of state affairs; the lawyer has a firm grip of legal rules which not only are made but have also to be enforced. He saves Parliament from impossible laws which the pure politician, carried forward by some strong wave of popular sentiment, might seek to make and succeed in making — but not in enforcing. He prevents legislation from going beyond its bounds into the sphere of morals and taste; he prevents, for example, the passage of any sweeping measure of prohibition, which, however well intentioned, cannot be legally enforced. This was also the reason why, in the past, the Crown Advocate in Malta sought the advice and concurrence of the Maltese Bar when new legislation was to be introduced.

Again, when the Malta Letters Patent Bill 1936 was being discussed in the House of Lords and it was proposed to alter the position of Maltese judges from enjoying their full independence because it was then suggested that they should be made to hold office simply during "the King's pleasure" and "not during good behaviour (*quamdiu se bene gesserint*) as it was before — public opinion in Malta was greatly shocked and the Chamber of Advocates, taking once more the lead, sent another memorandum to the Secretary of State. The Malta Government was instructed by His Majesty's Government to reply to the Chamber's protest as follows:

"With reference to para 9 of your Memorandum I am to invite your attention to the assurance given by the Earl of Plymouth, with regard to the position of the Judges, in the

Debate in the House of Lords on the Second Reading of the Bill on the 5th May 1936."

On that occasion the Secretary of State gave this assurance :
"I can accordingly give Lord Askwith an assurance that similar provisions to those contained in Sec. 55 of the existing Letters Patent regarding these matters will be re-embodied in the new Letters Patent which will be issued when the Bill becomes law. I have every hope that that will satisfy my noble friend and I think Your Lordships will now be prepared to give a Second Reading to this Bill."

The independence of the Maltese Judicature is now once more established as it was since Sir Thomas Maitland had introduced his constitutional reform of the Malta Courts of Law (1814) i.e. "the enjoyment of a fixed salary reserved in the Civil List and the irremovability from office except on grounds of misbehaviour or incapacity i.e. 'quamdiu se bene gesserint'."

Maitland in an Address to the Judges, Consuls and other legal Authorities, assembled at the Palace Valletta on January 2nd. 1815, expressed an elogium "on the industry and zeal by which you (the Judges) have been actuated, infinitely greater than any words I could possibly make use of on the occasion. It becomes me then, with these feelings, to express to you generally the deep sense I entertain, as His Majesty's Representative, of the merits of your past conduct and of the advantages derived by the British Government from the exertion of your judicial talents."

"You are now fortunately no longer liable to be removed at the pleasure of the Executive local authority — you are made independent of that authority both with regard to your incomes and the permanency of your situations."

One hundred and twenty years after such elogium, Lord Askwith, the Chairman of the Malta Royal Commission of 1931, who had first-hand knowledge after having been here in Malta, declared in the House of Lords during the memorable debate of the 5th May 1936 :—

"The Judges thoroughly deserved an increase of pay. They were very badly paid. They have on the whole proved themselves to be men of great ability, and I think that with the feeling for the law which there is in Malta, it would be a very serious thing if it were thought that the

position of the Judges was imperilled by the new form of Government. The position of the Judges has been often laid down. It was very much altered by the Royal Commission and there is an Ordinance of 1932, I see, which deals with their tenure, their qualifications, their remuneration, their length of office and how and when they can be turned out. There is also a similar code, not of such a drastic kind, with regard to the magistrates, from whom some of the Judges may be recruited. I should like to ask the Noble Earl, particularly in view of what was said by the Noble Viscount Lord Sankey, as late as 1932, that there was no intention of interfering with the position of the Judges, whether that would not hold good now, or whether His Majesty's Government cannot give out some hint that the Judges need not consider their position at all imperilled and that the people of Malta should not have a feeling that justice was not being adhered to."

On the first March 1946, His Honour the Chief Justice and His Majesty's Judges (Sir George Borg, and Justices Ganado, Camilleri, Montanaro Gauci, Harding, Schembri, and Gouder) were received at the Palace, Valletta, by His Excellency the Governor, Sir Edmond Schreiber, who wished to say good-bye to them on his relinquishing the Governorship of the Island. In a short address His Excellency said that he had never worried about the Judges, and he knew at all times that the administration of justice was safe in their hands. They had maintained throughout a high standard in the administration of justice. The great volume of emergency laws had imposed on the Judges a great strain, but they had discharged their duties efficiently and uncomplainingly, and had undoubtedly made a valuable contribution to the future of Malta. Besides, he had, at all times, felt that in His Majesty's Judges he had seven good friends.

When in the year 1825, the British merchants in Malta suggested the appointment of a British Judge to preside in each of the Courts of Law, the Marquis of Hastings, then Governor of Malta replied: "It was my duty to state that the conduct of the Maltese Judges has merited the confidence of the Government. Dr. Bonavia has lately been appointed one of them and in ability and integrity, it is no disparagement to any British

Judge to say that a fitter person could not be found to sit on the Bench (Despatch to the S. of S. 17th June 1825).

Maltese Judges have invariably upheld the independence and integrity of the Bench in the face of menaces and Government interference — even when the Executive power happened to be one of the parties in a case. It suffices to recall some very important judgements some of which have been upheld by the Judicial Committee of His Majesty's Privy Council. Such was the judgment delivered by the Court of Appeal on the 25th June 1930 in the case "Micallef Goggi vs. Mifsud" (presided over by Sir Arturo Mercieca) which declared null and void all the 29 Acts passed by the Maltese Parliament during the years 1929-30; the case "Strickland vs. Sammut" given by the same Court of Appeal on the 4th of March 1938 — which affirmed that the Crown of Malta had no power to legislate by Order in Council in matters which were not reserved, and that Ord. XXVII of 1936 was "ultra vires"; and the judgement delivered in the so-called 'Deportees Case' (presided over by Sir George Borg) which declared null and void the Ordinance passed by the late Council of Government in virtue of which the deportation of Maltese British subjects was enforced.

With regard to the proposed alteration in the status of His Majesty's Judges, to which reference has been made, Sir Arturo Mercieca writes: "Per contro non poteva essere ben accolta la seconda, per cui sarebbe tolta ai giudici ogni garanzia della loro indipendenza, che trovasi basata sulla loro inamovibilità. Preoccupati per questa minaccia ai nostri privilegi, ci incontrammo d'urgenza, e fu redatto un lungo memoriale con le ragioni che ci muovevano a chiedere che non si procedesse oltre con la seconda riforma. Corsi a San Antonio e lo presentai alle otto di sera al Governatore, pregandolo di telegrafare immediatamente un riassunto a Londra. L'indomani ci venne annunziato che la clausola relativa alla durata in carica dei giudici sarebbe rimasta come per l'addietro."

I may be permitted to add that the late lamented Judge Comm. Rob. F. Ganado was the driving force behind this unanimous action of His Majesty's Judges and a more befitting monument to his memory cannot be made than by recalling the important part taken in upholding the independence of the Maltese Judiciary.