

The Historical Development of the Criminal Code (2)

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IT will be remembered that when the Criminal Court was constituted, in 1814, it was to consist of two judges. Rules were also laid down on the manner of proceeding in that Court (1). In 1825, the Government found it expedient to increase to three the number of Judges in the same Court (2). One of the said three Judges was to sit in rotation to try and determine all offences where the maximum punishment provided by law did not exceed three years hard labour with chains, or simple imprisonment for the said period, or a fine to the amount of five hundred scudi. For offences of a higher nature, all three Judges were to sit, and the decision lay with the majority. As previously, the decision was to be final and without appeal.

The new enactment further laid down that if any doubt upon a question of law should arise in any trial before a single judge, or before the three judges, as the case may be, the Court was to proceed to ascertain the fact of the case, and was to reserve the question of law to be argued by the respective advocates on an early day, before the three judges of the Criminal Court who might decide the same; or the said three judges, either before or after argument, might, if they thought proper, apply to His Excellency the Governor to direct that two other persons, Members of the Supreme Council of Justice, being lawyers, or persons respectively holding the rank of Assessor to Government or of one of His Majesty's Judges be included in the composition of the Court. These five members, or a majority thereof, were then to decide upon such question of law; and thereupon one of the Judges of the Criminal Court was to deliver in open Court the reasoned

(1) Vide "The Law Journal"—Vol. II, No. 4—April 1949— page 217.

(2) Dr. Claudio Vincenzo Bonnici, who was to take later on a prominent part in the drafting of the Criminal Code, was appointed, on the 11th April, 1825, to sit in the Criminal Court with the other two judges.

decision arrived at, and pronounce the sentence of the Court accordingly (3).

When preparing the confidential report of 1824, Richardson noted some serious inconveniences in the laws of evidence. He observed that, in criminal matters, two witnesses were in general considered to be necessary to prove guilt; objections were allowed by law to the competency of witnesses, in some cases, and their credit in others, on the mere ground of connection or relationship with the parties; objections were also sometimes successfully made, and material witnesses in consequence excluded from giving evidence, on the ground of their having omitted to receive Holy Communion at the preceding Easter. He pointed out to the Secretary of State the inconveniences which arose from the application of these rules, and suggested that they should be advantageously rectified by a legislative proclamation, of which, in the same report, he enumerated the principal heads. The Colonial Secretary approved of the idea: Richardson prepared the substance of such a proclamation: its immediate enactment as a law was carried into execution by Governor Hastings (4).

(3) Proclamation VII—11th April, 1825. Owing to a considerable arrear of causes in His Majesty's Criminal Court these rules were again amended by Proclamation VI of the 15th June, 1827, with a view to expedite the decision of the said causes, and to prevent a like accumulation in future. The number of sitting judges in the said Court was increased to four by Proclamation X of the 3rd October, 1827. Minor amendments respecting the powers of the Courts of Magistrates and the exercise thereof were also introduced by various enactments, namely Proclamation IV of the 8th May, 1826, Proclamation VII of the 22nd April, 1828, and Ordinance I promulgated on the 8th April, 1840.

(4) Vide Richardson—*op. cit.* page 8. This law was promulgated on the 25th April, 1825 (Proclamation (VIII)). Besides remedying the inconveniences mentioned by Richardson, it laid down other provisions on the law of evidence applicable either in Civil or in Criminal cases, or in both, many of which are still in force to-day. After its promulgation, Richardson, upon a perusal and consideration of this law, thought that section 14, relating to the admissibility of the evidence of witnesses who do not or cannot appear in open Court, was deficient in perspicuity, and perhaps in correctness. In order to render this section more clear and precise he drafted an amendment, which he annexed as an appendix to his report of 1826. (V. Richardson—*op. cit.*, page 11. Also appendix A, No. 2—page 50). His draft became law by Proclamation III of the 10th March, 1827.

It has been stated in the previous chapter that Dr. Ignazio Gavino Bonavita was of opinion that the time was not yet ripe for the introduction in Malta of the system of trial by jury. Some years previously, Maitland had also expressed himself in a similar strain. He declared that, though he was not quite sure whether the minds of the people of Malta were, at the moment, exactly fitted for the same beneficial effects which the people of Great Britain enjoyed, yet it was a condition in which, when circumstances would admit of it, he would be proud to lend his aid to place the inhabitants of these Islands (5).

On the 2nd of June, 1826, His Majesty by Warrant under the Sign Manual placed Sir John Stoddart at the head of the Judicial Department in these Islands (6). He arrived in Malta, together with Lady Stoddart (7), on the 16th November of the same year, on board the Neapolitan schooner "Concezione" from Syracuse, Sicily, after a voyage of four days (8). On taking his seat, for the first time, as President of the Court of Appeal, he delivered, on the 22nd November, 1826, an address in which he acknowledged that the law of England was not in every respect adapted to the customs, interests and wishes of the Maltese: although he thought that certain institutions in the English law were fit to be taken as models for bringing to perfection the law of Malta. One of these institutions deserved particular consideration: that is, trial by jury.

The decision of twelve jurors on matters of fact as practised in England was justly admired, even by foreigners, Stoddart con-

(5) V. "Address of H.E. the Governor to the Judges, Consuls, and other legal authorities, assembled at the Palace of Valletta, January, the 2nd, antecedently to the opening of the first term of the Courts of Law for the year 1815". (Published in Proclamations, Minutes etc. 1813—1820 at the Government Printing Press in 1821—page 95). V. also "Charge of H.E. the Governor, First Commissioner under H.M.'s Commission of Piracy, to the Grand Jury; delivered the 16th of November, 1815. (Published in the same volume of Proclamations etc.—page 137).

(6) On the 5th July, 1826, Stoddart was appointed Judge of the Vice-Admiralty Court in Malta by a Commission issued from the High Court of Admiralty in England; and, by Government Notice of the 16th November, 1826, he was appointed by H.E. the Governor to be Senior Member of the Supreme Council of Justice. — V. Malta Government Gazette, 22nd November, 1826.

(7) Lady Sarah Stoddart was William Hazlitt's first wife.

(8) Malta Government Gazette, 22nd November, 1826.

tinued. Candidly speaking, he thought that this mode of procedure was not so well adapted to the situation of Malta at the time, and he was certain that the Sovereign would not direct the establishment of a system, however perfect in itself, should it be found opposed to the interests, or even to the prejudices, of his subjects. But, in the future, it might be found practicable to conciliate with the principles of the Maltese Laws some modification at least of the admirable proceedings by jury (9).

Subsequently, Sir John Richardson, in his report of 1826, had also pointed out the inconveniences of introducing this system of trial immediately. But he expressed the hope that after the lapse of a few more years such a change in local circumstances might be perceptible as to warrant the introduction of some kind of Jury in certain cases. He recommended that, when that time should arrive, the experiment be at first made on a small scale, and confined to the graver descriptions of criminal offences, perhaps to capital cases only; that the jurymen be not more than five or six; and that these, after hearing the law explained by the judges in a public charge, should deliberate and decide conjointly with the judges, on the question of fact (10).

On Hastings' death, which occurred in the same year, Malta was placed on the establishment of a Lieutenant Governorship, in order that the heavy charge upon the revenue of the Island might be lessened. On the 15th February, 1827, Sir Frederick Gavendish Ponsonby assumed the administration of the Government. He decided to tackle the question of trial by jury and resolved to act on Richardson's suggestions. Stoddart was called upon to make the necessary arrangements: besides being a judge he was, at times, a legislator.

The principle on which Stoddart proceeded, and which was finally adopted by His Majesty's Government, was that the "spirit and substance" of the English institution should be retained, but that it should be conciliated, as far as possible, with "the principles of Maltese law". If the former condition were violated, the law could be rendered intelligible to those who were to carry it into effect. No scheme, however, containing these two conditions, could form a permanent, and much less a perfect sys-

(9) V. Malta Govt. Gazette—29th November, 1826.

(10) V. Richardson—op. cit., page 7.

tem of procedure. It must, in the very nature of things, be intended to be progressive, adopting first what was practicable in Malta, and then approximating to what was practised in England (11).

The plan prepared by Stoddart was laid, by the Lieutenant Governor, before the Secretary of State, who, at Stoddart's request, communicated it to Sir John Richardson. That eminent judge in the course of a long correspondence with Stoddart contributed greatly to its improvement. When the draft was fully approved by the King's Government, it was returned to Ponsby, who referred it to Stoddart and the six Maltese Judges for final revision. The whole body, after a week's separate consideration of the plan, discussed it section by section, at a general meeting, and, after a few slight corrections had been made, approved it unanimously (12). It was promulgated as law by Proclamation of the 15th October, 1829 (13).

Trial by jury was thereby introduced into the criminal branch of procedure, though it was confined to the graver description of offences, namely to those "punishable with death, or with any punishment continuing to the end of the offender's

(11) V. Stoddart's "First Report on the Law of Malta, and the administration thereof" submitted to the Secretary of State for the Colonies on the 10th February, 1836—Para. 42. (Published as a Supplemental Appendix, marked "B", to the "Case on behalf of the Crown Advocats of Malta in the Privy Council in the matter of the validity of certain mixed and unmixed marriages at Malta").

(12) V. "Copy of Correspondence between the Marquis of Normandy, Sir John Stoddart, the Commissioners of Inquiry and the Governor of Malta, respecting Sir John Stoddart's claim for compensation".—Ordered to be printed: 13th June, 1839.—No. 123—page 44.

(13) This law was subsequently amended by the Regulations of the 31st May, 1830, and by the Proclamations IX of the 2nd August, 1830, IX of the 26th September, 1831, VII of the 26th April, 1832, II of the 8th August, 1836. Proclamation IV of the 30th October, 1838 introduced some provisions for the trial of collateral issues in the Court of Special Commission, and for the due care of persons found by competent authority to be insane. Other additions and amendments to the principle law were made by Proclamation II of the 24th January, 1839, and by Proclamation I of the 5th March, 1845.

natural life" (14). Accomplices in the said offences, whatever the punishment prescribed by law against them might be, were to be tried in a similar manner. The "Court of Special Commission" was constituted; it was presided over by the Chief Justice, who was to sit with three or more judges of His Majesty's Superior Courts, and a jury, consisting of a foreman and six common jurors, three of which were to be drawn from the "Maltese class", and three others from the "British class".

The trial was to be conducted in the English or Italian language, at the choice of the prisoner. Until the delivery of the verdict, the jurymen were precluded from communicating with any person. The members of the jury were to decide, by a majority of votes whether the facts alleged in the indictment had been "Proved" or "Not Proved", and they could qualify their verdict by the explanations they thought necessary.

Should the verdict be "Proved", it lay at the discretion of the Court either to give sentence immediately, or reserve the question of law arising thereupon for further deliberation. In the case of an erroneous verdict the Court might order a new trial to be held; the accused could also ask for the same benefit. The sentence of the Court was final and not subject to appeal. **Sentence of death** could only be pronounced either where the accused persisted in pleading guilty, or where the jury returned a unanimous verdict of guilt. These are the general lines of the jury system established by the law of 1829.

But Magistrate Ignazio G. Bonavita was dissatisfied with the piecemeal sort of criminal legislation which was being enacted, and advocated a speedy reform and codification of the whole Criminal Law of Malta. Too much confusion was prevailing in that law at the time, and Bonavita was convinced that, in order to do away with that confusion effectively and in the shortest possible time, the only remedy lay in adapting for Malta one of the best Penal Codes of Europe. This he had already submitted to Richardson, and he continued to press for this solution with

(14) The law made the jurisdiction of the Court depend on an annual Commission. The terms of the Commission issued for the first year were directed to include only certain specified crimes of the gravest kind; but for every following year, it was left to the Governor's discretion to extend the limit of jurisdiction to such offences as he might think proper. At time, some slight extension did in fact take place.

influential Government Officials, especially after his elevation to the Judicial Bench on the 1st October, 1827.

In his opinion, the jury law of 1829 could well be said to have been premature; the system had added to prevailing confusion, amid the general discontent of the public (15). This state of affairs induced him to submit a Memorandum "On the present state of the Maltese Law" to the Lieutenant Governor, Ponsonby, wherein he observed that, in contrast to the fixed and invariable rules of procedure obtaining in England, Malta was still encumbered in the practice of its Courts with a system made up of conflicting elements, which consequently led to much embarrassment. For, the laws by which these possessions were governed consisted of :

1. the Constitution of the Courts of 1814;
2. the Municipal Law or Code de Rohan;
3. the Civil or Roman Laws;
4. the precedents of the most eminent foreign tribunals.

In practice such a system was incomplete, contradictory, uncertain, and, sometimes, even absurd.

He pointed out that it was undeniable that Maitland's *Constitution of 1814* effected a considerable and very material change in judicial proceedings, but it only embodied the general principles on the subject. Subsequently proclamations made partial additions and improvements, but the whole, besides being dispersed in several laws, was very far from being a complete Code of Procedure.

On the other hand, *the Municipal Laws* of de Rohan did not even deserve the imposing title of "Code". They were nothing more than a collection of a few unconnected statutory laws, compiled without any method, and framed more to interpret or modify some of the Roman Laws and prevailing opinions of writers upon a few matters of that Jurisprudence, than to lay down the fundamental laws which were to rule the island, and which might with propriety be styled 'a Code of Laws'. Moreover, the reforms introduced in 1814 and in the subsequent years had rendered a great part of those laws obsolete.

(15) V. Sir Ignazio Bonavita—'Storia del Codice Criminale'—Fols. 1 and 2. This history exists in manuscript in the first of the three volumes of "Carte relative al Codice Criminale del 1854" mentioned in Chapter I.

The part of the Code de Rohan dealing with Criminal Law made reference only to a limited number of classes of crimes, and was framed upon the principle that the judges "ex justa causa" had the power to moderate or increase the punishment inflicted by law—a principle which was now expressly abolished. Finally, nothing was to be found in the Code de Rohan "of the subjects constituting the preliminary matters which ought always to precede Criminal Codes, such as enactments relative to persons capable of committing crimes, to accessories, or to acts, which, although prejudicial to others, are nevertheless not to be imputed to criminal intention, etc."

The value of *Roman Law* considered as the source of the fundamental principles of modern legislation was too much appreciated to admit of any additional praise. But if one looked upon the Roman Laws as forming the statutes or written law of any country in the present day, wrote Bonavita, they must appear absurd and not at all adapted to any legislature whatever since no modern nation was placed under the same local circumstances, spirit of Government, habits or usages, as the Romans. In truth, the Island was less ruled by the Roman Laws than by the individual opinions of those writers who had commented upon and interpreted them; and the doctrines of those writers were very often extremely contradictory. By saying this, he did not mean to infer that the principles and substance of this branch of our Jurisprudence ought to be changed.

With regard to the precedents of the most eminent foreign tribunals, Judge Bonavita observed that it was not even established which were the most eminent and the most worthy to be quoted among the foreign tribunals; consequently, every lawyer was left at liberty to pick and choose such as suited best his convenience or purpose. It was also important to bear in mind that neither the proceedings of the Courts of Justice in England nor those of our own Courts were looked upon as having the binding force of law here. Furthermore, however wise might be the decisions of any of the Courts of Rome, Florence, Naples, France and Spain, they could never be considered *wholly* applicable to cases in Malta, as particular usages, particular established opinions or statutes not in consonance with any of ours might have influenced the decision of these Tribunals.

This confusion which existed in our laws called for an urgent remedy, and, with this end in view, Bonavita submitted a number of suggestions. As far as judicial proceedings were concerned, he thought it advisable to consolidate the Constitution of the Courts of 1814 and all procedural laws enacted thereafter; to provide for the defects which would result from such consolidation by the introduction of rules taken from the Municipal Laws, or collected from former practice and from the Roman Law, where they were considered reasonable and coherent with the principles and spirit of the Constitution and of the subsequent laws, or by laws framed on what might be suggested by justice and the experience of the past; to draw up an index of the whole. By so doing Malta would soon have a coherent and permanent Code of Judicial Proceedings, uniform in its application.

Bonavita then passed on to the consideration of the Commercial and Criminal Laws. On the latter he said: "The circumscribed extent of the criminal branch of jurisprudence affords a still greater facility for the compilation of a Criminal Code, and, what has already been prepared by Sir John Richardson, in conjunction with many modern Codes published during the last twentyfive years, furnish a vast number of good materials for an excellent Code upon the most important branch of legislation, and which, perhaps, at present is the most defective which we have".

Finally, he suggested that the compiling of the three Codes of Judicial Proceedings, Commercial Laws, and Criminal Laws, be entrusted to three different persons, or separate committees, composed of as few competent individuals as possible. One could not expect these compilations to be at once a correct, wise and complete set of laws, but by their publication a great stride towards the achievement of this end would have been made. For the further improvement of the Codes, the Judges might be instructed to transmit to Government the decisions of all such important questions of law as were by them determined. The compilations might also be periodically referred to the said respective Committees, which would then be rendered permanent, in order that they might be able to submit suggestions for new enactments. By the adoption of this method, Maltese legislation would considerably improve, and positive, permanent and

unquestionable principles would be laid down for it. Thus would "the door be shut to useless litigations, discussions, and, sometimes, irretrievable errors" (16).

Ponsonby was impressed by Bonavita's comments and suggestions. He sent for Judge Bonavita and presented him with a printed draft of the Criminal Code which was being drawn up at Corfù. He directed him to examine it, and report whether and how far it was possible to draft a similar Code for Malta (17). Bonavita faithfully carried out the mission entrusted to him, and he submitted his report in due course.

Before passing to examine in detail chapter by chapter and some articles of this Draft Code, Bonavita premised some observations of a general nature. He proposed that anything relative to titles, institutions, regulations and localities peculiar to the Ionian Islands, and not existing in Malta, should be left out; and when our Island offered anything substantially equivalent to them, although under a different name, it should be substituted to them.

Certain punishments awarded by the Ionian Code, but not practicable in Malta, were not to be adopted. The punishment of death in that Code was established more frequently than necessary; such a severe punishment was seldom requisite in Malta, where high treason was a crime nearly unknown, and heinous crimes were very rare. With the exception of the quality of punishment, the most substantial parts of the Ionian Code corresponded precisely to the laws obtaining in Malta, with the difference that what was stated with certainty and precision in a few pages of the Ionian Code, has to be sought for in innumerable and voluminous books of jurisprudence in Malta.

One of the guiding principles for the drafting of our laws was to be this: when any of the enactments of the Ionian Code were found to relate to matters, on which either our Code de Rohan contained particular provisions, or Sir Richardson had suggested particular enactments, the latter were to be consulted and compared with the Ionian Laws, with the purpose of making in these laws such additions and improvements as would

(16) A manuscript copy of this Memorandum (undated) is also to be found in the said first volume of papers relating to the Criminal Code of 1854, marked Enclosure "C".

(17) V. Bonavita—"Storia del Codice Criminale"—Fol. 2 tergo.

be considered necessary for their adoption here (18).

At this period of Bonavita's activity, the Lieutenant Governor in a letter to the Under Secretary of State for the Colonies proposed to adopt Sir John Richardson's Criminal Code, and to fill up its "vacuities" with enactments conceived in the same English spirit as the parts completed. Ponsonby subsequently communicated this letter to Stoddart, who not only acquiesced in the idea, but suggested that it might be applied to the reform of the whole system of local Jurisprudence, by expunging many old blots which still disfigured that system, and carefully and gradually introducing in their place such principles and institutions of English Law as might be suitable to the circumstances of the mixed British and Maltese population.

The Lieutenant Governor requested Stoddart, the Chief Justice, to undertake the task. Stoddart asserts that Ponsonby's choice fell upon him, because he was fully sensible that no Maltese lawyer was sufficiently versed in the Law of England to be able to form a practicable plan for such a purpose. Stoddart started on the work with his usual vigour. He compiled the necessary statistics, and incorporated them in a "plan for the gradual and systematic reformation of the whole law of Malta". Moreover, he recommended that the measure, if approved, should be carried into effect by one or more British lawyers to be sent out from England with a Commission for that purpose; to them he was prepared to afford all the information and assistance in his power (19).

Ponsonby transmitted Stoddart's "Plan of Legal Reform" accompanied by a report to Lord Goderich, the Secretary of State, who referred it to the consideration of the Lord High

(18) V. "Observations on the Ionian Criminal Code in as much as it may be applicable to the Island of Malta and its Dependencies). A manuscript copy of this Memorandum (undated) is also bound in the first volume of Bonavita's papers relating to the Criminal Code of 1854, marked Enclosure "J".

(19) V. Correspondence respecting Stoddart's claim for compensation (op. cit.)—page 50.

Chancellor of Great Britain (20). Afterwards, when writing to Ponsonby, Lord Goderich referred to this plan with encomium. He stated that it was impossible not to perceive, and it would be unjust not to acknowledge the great industry and clearness with which Stoddart's project had been drawn up, and the comprehensive view which it exhibited of a subject not less intricate than it was important. In his view, it embraced at once the general principles of legislation for the protection of private rights and the punishment of crimes, with a consideration of the local peculiarities by which the adoption of those principles at Malta should be qualified (21).

The course of proceeding decided upon by the Secretary of State for the general revision of the Maltese Codes of Law was that Stoddart should receive the cooperation and assistance of Mr. Barron Field, the First Judge of the Supreme Court at Gibraltar, and of Mr. Kirkpatrick, the Chief Judge of the Ionian Islands. The latter two Judges were to correspond with Stoddart on the subject and would occasionally join him for the sake of personal conference. Moreover, should Ponsonby and Stoddart agree that with such aid the scheme could be prudently undertaken, His Majesty would be ready to impart to Stoddart and the two Judges any such powers as might be requisite; and should it be thought that this plan was fit for adoption, Stoddart should be requested to prepare the form of any Commission and Instructions which he might deem right to have addressed to himself and to the two learned Judges alluded to. These decisions were transmitted to Ponsonby by a despatch of the 3rd June, 1831.

Ponsonby delayed to communicate this despatch to Stoddart as he had not yet received the determination of His Majesty's Government on some propositions connected with the subject which he had submitted to the Secretary of State. It was necessary for him to learn the Colonial Secretary's decisions on

(20) V. Stoddart's letter to the Chief Secretary to Government dated 17th September, 1831. (Enclosed in Despatch No. 58—1st October, 1831—Lieutenant Governor to the Secretary of State).

(21) V. Correspondence respecting Stoddart's claim for compensation (op. cit.)—page 50—"Extract of a Despatch from the Secretary of State (now Earl of Ripon) to the Lieutenant Governor of Malta, 30th June, 1831".

those propositions before he could make up his mind on the scheme transmitted to him by the said despatch, and offer his opinion thereon. Ponsonby then had to leave the Island for a short period.

In the meantime Mr. Barron Field by direction of the Secretary of State proceeded to Malta. On his arrival here, he communicated to Stoddart a copy he had received from the Colonial Office of the despatch of the 30th June. In a letter to Colonel Augustus Warburton, the Acting Lieutenant Governor, Stoddart expressed his clear and distinct opinion that the course of proceeding recommended by Lord Goderich was one of the most judicious that could be devised for the attainment of the objects which it had in view. It would procure for the Island of Malta all the benefits which could be derived from the united experience of all the Chief Judges in the Mediterranean. He enclosed with his letter for transmission to the Colonial Secretary the Draft of a Commission and Instructions he had drawn up in accordance with the latter's directives.

Stoddart's letter with its enclosure was immediately forwarded to Lord Goderich by the Acting Lieutenant Governor, who thought that as he was only temporarily administering the Government he should abstain from submitting any remarks on the enclosed papers. But he deemed it his duty to state that he was aware that Ponsonby entertained a strong opinion that it would be expedient to have as member of the Commission for the Revision of the Codes at least one of the Maltese Judges who would be found useful in tempering the changes so as to adapt them to the state of society in Malta (22).

John Kirkpatrick, the Chief Justice of the Ionian Islands also arrived in Malta on the 1st September, presumably, like Barron Field, on instructions received from the Secretary of State. When Kirkpatrick was informed as to how the Commission was to be composed, and what was the form of the proceedings as recommended by Stoddart in his draft "Instructions" he strongly objected to both, and he wrote to the Secretary of State that, as the new laws were destined to govern a civilised country which already possessed its own laws, forum, and judi-

(22) V. Despatch No. 53 of the 28th August, 1831, from the Lieutenant Governor to the Secretary of State, and its enclosures.

cial organisation, it was degrading for the natives of the Island that no one of them should form part of the Commission. He added that he would not take part in the work unless two of the Maltese Judges were appointed members of the Commission. Moreover, if the form of proceedings suggested by Stoddart were to be adopted, the Commission would take a century to complete its work, whilst reform was urgently required (23). Finally, he explained the mode in which he conceived that the revision of the Codes might best be accomplished (24).

After mature consideration, Lord Goderich sent the directions of His Majesty's Government to Warburton; his very important despatch merits publication in its entirety. The Secretary of State pointed out that the question arising out of the different views submitted to him was whether it was convenient that the proposed Maltese Codes should be framed in such a manner as to induce the closest resemblance which circumstances admit between the Law of England and the Law of Malta; or in such a manner as to embody the best and most applicable provisions of the Codes recently promulgated on the continent of Europe. The latter course was simpler. He fully acknowledged the great advantage of introducing English institutions into every settlement annexed to the British Crown, but he could not press on towards this great object to the disregard of all the principles which stood in its way.

"If it be necessary to establish in Malta", he wrote, "the legal maxims of this kingdom, it is not less necessary to respect the wishes, nay, even the prejudices of the ancient inhabitants. If it be wise to act upon large views which extend to a remote futurity, it is also essential to protect the interests of the existing generation." Thus Stoddart's scheme appeared to be objectionable as it overlooked the exigencies of the times, in order to provide for the wants of a successive generation. Sir John Stoddart wished to take the law of England as his basis. But it was superfluous to say that from that law he could draw little beyond mere suggestions; for English law consisted of a body of customs, statutes and judicial decisions founded upon and inseparably united with the habits and social manners peculiar to Englishmen.

(23) V. Bonavita—"Storia del Codice Criminale"—Fol. 3.

(24) V. Despatch No. 23—October 6, 1831—S. of S. to Lt. Governor.

It was true that with all its admitted defects English Law formed one of the noblest monuments of human genius. "Still, however, it must be conceded that the law of England is less fitted than that of any other civilised country for transplantation to a foreign soil. Sir John Stoddart would scarcely find in it a single tenet which could be transferred without mutilation into his proposed code."

On the other hand, the great jurists of France had brought together an admirable body of laws, and their five codes had been adopted in Belgium, in many States of Germany and Italy, and more recently in the Ionian Islands. "To withhold from the Maltese the same boon, because we hope that a day may come when a more nearly English system may be established, were to exact from them a sacrifice, which I cannot think that the relation in which this Kingdom stands towards them would justify." Consequently, the first step in the progress towards an ultimate settlement of the question should be to complete the Criminal Code which had been commenced by Sir John Richardson, and then also a Civil Code. This would not be considered as a final measure, "but as preparatory at some future period to the introduction of so much of the law of England as could be advantageously reconciled with the feelings, interests and peculiar circumstances of society at Malta."

With regard to the authority to be given for the undertaking of this enquiry, Lord Goderich intimated to the Malta Government that the Commission was to be transcribed from that granted to Sir John Richardson, with no other variation than those which the greater range of enquiry and the greater number of the Commissioners might render indispensable. The Commission was to be issued to Sir John Stoddart, Mr. John Kirkpatrick, Mr. Barron Fied, Dr. Claudio Vincenzo Bonnici and Dr. Ignazio Gavino Bonavita. These Commissioners were to be instructed "to take into their consideration the best method of establishing for Malta a Civil, Criminal and Commercial Codes, with Codes of Civil and Criminal Procedures grounded upon the reports of Sir John Richardson, and upon the principles and rules of the most approved Codes of foreign countries, provision being made for all those cases and exigencies in which local reasons may require the preservation of existing laws, but so that the entire Code may be consistent and symmetrical."

Every possible assistance was to be given them in the execution of their respective duties, and they were to report to the Head of Government any difficulty that might arise and the progress of their work.

The Secretary of State for the Colonies ended his despatch by expressing the hope "that the gentlemen to whom this duty is committed, will engage in it with their wonted zeal for the public service, and that no further obstruction will arise to delay the completion of a design of so much importance to the welfare of the Island of Malta and its Dependencies" (25).

The policy outlined by Lord Goderich was fully endorsed by the Acting Lieutenant Governor, Colonel Henry Anderson Morshead, who expressed his admiration "not more of the reasoning in the despatch of itself so just, than of the wisdom and benevolence of the decisions it contained". The Maltese had laboured for a long period under a defective and complicated system of Jurisprudence; but His Lordship, Morshead opined, had indicated a mode of remedy which could not fail, and for this the faithful Maltese stood deeply indebted to him (26). A copy of the Colonial Secretary's despatch was sent to the five Commissioners by the local Government; they were also informed that the first step to be taken in pursuance of His Majesty's Order was to frame the Commission itself and the Instructions (27).

Meanwhile, on the 5th November, 1831, the public was informed of the institution of a Commission for the framing of the Maltese Law Codes, and of the members of which it was composed (28). Ten days later, the Commission which the Commissioners had drawn up was issued under the Great Seal of the Island of Malta (29). The terms of this Commission stated that it was the desire of the Sovereign "to make provision for the

(25) Ibid.

(26) V. Despatch No. 67—October 26, 1831—Acting Lieut. Gov. to S. of S.

(27) V. Letter of the 3rd November, 1831 sent by Frederick Hankey, the Chief Secretary to Government, to the Commissioners (Enclosed with Despatch No. 72—30th November, 1831—Acting Lieut. Governor to S. of S.).

(28) V. Malta Govt. Gazette—9th November, 1831.

(29) Published by Minute of the 19th November, 1831. V. Malta Government Gazette—23rd November, 1831.

complete improvement of the law, and for the speedy and economical administration of justice" in the Island of Malta and its Dependencies. With this end in view, the five Commissioners were directed to draw up successively five Codes of Law, to wit, a Code of Criminal Law, a Code of Commercial Law, a Code of Civil Procedure and a Code of Criminal Procedure. The directives contained in the despatch of the Secretary of State were also embodied in the Commission.

Moreover, the Commissioners were instructed to transmit each Code, as the same should be completed, to the Head of the Government, with such comments as might seem necessary to them. Full power and authority was given them to call and examine any person including the Governor and the Bishop. They could also administer the oath to any appearing before them, and could order the production of any documents, official or otherwise, which they might require. In the case of absence of one or more of the Commissioners, or of his or their ill-health, or other lawful impediment, the Commission was legally constituted so long as two members were present.

The Commissioners, with the exception of Mr. Barron Field, who never attended the sittings of the Commission (30), immediately commenced on the important undertaking which had been to them entrusted. They met for the first time at the Government Palace, Valletta, on the 18th November, 1831 (31). At this sitting the Commission was formally read out in the presence of the Acting Lieutenant Governor and the Chief Secretary. It was agreed that three sittings were to be held every week, and each sitting was to commence at 9 a.m. From the very first Stoddart showed little interest in the work being done, and used to arrive always an hour late at the Commission's meetings. This attitude was interpreted by Bonavita as being due to the fact that Stoddart was piqued because his plan had not been adopted, and because his ascendancy over the Mal-

(30) Mr. Field had arrived in Malta on the 18th August, 1831, and remained here for about two months. During that period Stoddart laid before him a variety of documents relative to the Law of Malta, and held frequent consultations thereupon with him, preparatory to the business of the intended reform. After Field's departure Stoddart consulted him by letter on various matters relating to the Commission. (V. Correspondence respecting Stoddart's claim for compensation—op. cit. page 50).

(31) V. Malta Government Gazette—23rd November, 1831.

tese Bench had been broken by his being obliged to sit on a Commission with two Maltese Judges. Obviously, he was seeking to prolong the work so much that Kirkpatrick's duties would call him back to Corfù and he would thus be left with an open field in which to deal with the Maltese Judges.

The Commissioners first directed their attention to the drafting of the Codes of Criminal Law and of Criminal Procedure as they considered their promulgation to be a most urgent necessity, and as the drafting of the other Codes would be more difficult of fulfilment. In the beginning, the Commission accepted Stoddart's proposal that the penal Code which was being drawn up in the Ionian Islands by a Commission of which Kirkpatrick formed part be taken as the model and the basis for our Criminal Code. But this was subsequently set apart as it was still in too primitive and imperfect a state; the Code of the Two Sicilies, on which the Draft of the Ionian Code was based, was substituted therefor.

The question of the mode of proceeding the Commission should follow was then opened. Bonavita, Bonnici and Kirkpatrick insisted that the plan of the Sicilian Code be adopted; that the sections of that Code which would not be considered suitable should be left out, that other provisions taken from existing Maltese Laws, or from Richardson's suggestions, or others which the Commission would deem to be advantageous should be inserted. Stoddart objected on the ground that the classification and order of the Titles and Chapters of the Code of the Two Sicilies was defective, and that some provisions which that Code included under a heading or title should fall under another heading or be inserted under another title. Kirkpatrick pointed out that, though admittedly the Code in question was not perfect, the same criticism as that made by Stoddart could be levelled against any other Code; and, in his opinion, it would be better to follow the classification of that Code than to create a new one which might turn out to be even more imperfect.

Interminable discussions followed. Every word pronounced by either party developed into a heated argument, and led to the use of strong expressions by both sides. Gone was the calm and tranquillity of mind required for the sort of work on which the Commission was employed!

The punishment of flogging was another subject which added to the charge of the threatening atmosphere. This revolting form of repression was in certain cases ordered by the laws then in force, and thus the judges had no option but to award it in a sentence of conviction. But, on the recommendation of the sitting judge, the Executive branch of the Government invariably commuted this punishment. Now, the Maltese Commissioners and Kirkpatrick wanted to abolish it altogether. Stoddart also seemed to be averse to its retention; but he insisted that the two senior judges of the Court of Appeal who did not form part of the Commission be consulted. It was evident that Stoddart was persisting in his delaying tactics, and the Commissioners feared that he was trying to create a precedent, and thus introduce the practice of consulting with those two judges on any difference of opinion, however slight and unimportant, which might arise in the course of the Commission's work.

Consequently, they were not prepared to let Stoddart have his own way. They objected that the matter in dispute involved no difficult point of law for the determination of which it was necessary or desirable to call upon the assistance of persons not forming part of the Commission. On the other hand, the right solution of the point at issue was quite manifest. Stoddart himself had not expressed himself against the abolition of that sort of punishment. In any case, whatever the opinion of the two senior judges might be, Bonavita, Bonnici and Kirkpatrick were determined to stand unshaken in their opinion.

Notwithstanding these unfortunate incidents, and the time lost by Stoddart, who, besides being always late, persistently indulged in long digressions on matters irrelevant to the question at issue or to the work in hand, the Maltese Commissioners and Kirkpatrick, by the sheer weight of their number succeeded in almost completing the first draft of the Code of Criminal Law (32). This draft was divided into three books, which dealt respectively with punishments, crimes and contraventions. Though the draft was almost completed, it was not yet in a state to be laid before the Government as several points had been re-

(32) V. Bonavita—"Storia del Codice Criminale"—Fols, 5-9.

served for further consideration both as to substance and arrangement (33).

Meanwhile, Mr. Kirkpatrick had to return to Corfù, where his presence was required during the Session of the Ionian Parliament. He left Malta on the 27th January, 1832 (34). Before his departure, the Government of Malta assigned to him a sum of money in remuneration of the services he had rendered. Kirkpatrick declared that he had accepted the Commission given him without any idea of pecuniary compensation, but solely because he wished to be useful, within his possibilities, to the Maltese. Thus he directed the Government to employ the amount awarded to him for charitable purposes (35). A truly generous gesture!

Thus the first phase of the Commission's work came to an end. Bonnici and Bonavita had lost the valiant help of a perfect gentleman. The one who took his place did not prove to be a worthy successor.

(33) V. Despatch of the 29th February, 1832 sent by the Acting Lieut. Governor to the Secretary of State.

(34) Ibid.

(35) V. Bonavita—"Storia del Codice Criminale"—Fol. 9.