

Address by the Chief Justice, Sir Arthur H. McShine, on the occasion of the Ceremonial Opening of the Supreme Court of Trinidad and Tobago at the beginning of Term on Monday October 5, 1970

The partially abridged ceremonies of today's formal opening of a new law term indicate in some small degree that all in this country is not quite as it was in yester years. It is not easy to recollect when if ever there has been the ceremonial opening of term during a period of Public Emergency. I sincerely trust however that there will be no abridgment of the ceremonials for the same reason in the years that follow.

Precisely because of this state a greater burden has been placed upon the Judiciary and the Magistracy, indeed, upon the whole machinery for the administration of justice in this country.

At such a time the role which this administration is called upon to fulfil is a vital one and the task of all who serve in this sphere - be he judge, magistrate or member of the staff - is considerable and is harnessed with a great responsibility.

I am happy to say that so far an excellent job has been done by all, although I must single out the magistrates for special notice upon the work that is being done and has been done over the past five months. When this new law term gets underway the task that will confront the judges of the High Court will in no way be less exacting. I have, however, the greatest trust and respect for the judges and I am sure they will do as well as their brothers who labour in the less exalted sphere.

I feel I will be indebted to them as I am to all the magistrates. I am also glad to note that this confidence, regard and respect for the judiciary is expressed and shared by a large section of the mass media. A new weekly newspaper has drawn attention to the work of the judiciary and commended the judges on their loyalty to the country under disheartening and frustrating conditions and in difficult circumstances. I echo this in order to express my thanks and gratitude to all who are charged with the task and responsibility of administering justice in all the courts of this country.

Once again I must acknowledge the goodwill and cooperation not only at the morning's ceremony but that which has been extended to the administration over the last year by the legal profession as a whole. Such courtesy and consideration is deeply appreciated and evokes my warmest acknowledgments. The legal profession has remained loyal and has been tolerant notwithstanding the many difficulties and disadvantages under which the administration suffers, for example, the hot and noisy court rooms, the delays associated with litigation from the want of facilities and by no means the least of these, the many outmoded laws and the absence of regulations under many Acts which ought to be revised and promulgated respectively.

I go on to review the work of the Courts for the past year as has become almost traditional. I shall as well have a word to say on the conditions under which the Courts labour and finally as I said last year a word "for changes in the law itself in order that it might naturally reflect that pattern of society foreseen in the directive principles of the Constitution".

The degree of productivity in all the High Courts has been most satisfactory, but the palm for last year's best results must go to the working courts at San Fernando. I therefore notice first their records. Cause for much concern arose last year from the state of the lists and backlog of cases in the San Fernando Registry. At October 1, 1969 there were on the civil list of cases 260 matters outstanding; during the period October 31, 1969, June 30, 1970, 107 new cases were entered on the general list, during the same period 189 cases were disposed of; it is therefore to be deduced that the group of outstanding cases has been reduced by 82 and this leaves a total of 178 outstanding cases at San Fernando. This is even a better result than appears from the figures, for it has excited great tolerance and understanding from both litigant and lawyer alike. Moreover, if that rate of reducing the backlog is maintained, in just over two years, provided there is no staggering increase in the numbers of new cases entered on the General List, the position will be on an equilibrium between new cases and those disposed of.

This happy situation in San Fernando has been achieved not only by the commendably greater efforts of the judges but by the fact that for several months in the past year it was only necessary to have one criminal court. Normally each month two criminal and one civil court sit in San Fernando. But the criminal work has been so effectively handled that oft it was only necessary that one criminal court should sit. This allowed for the change to two civil courts and one criminal for a number of months.

This brings one to the statistics with regard to the Criminal Assizes. But for brevity I shall deal with this globally. As at September 15, 1969 there were 408 committals outstanding and with new committals listed for hearing during the period September 15, 1969 - August 30, 1970 numbering 279 there was left to be disposed of by the High Court 687 criminal cases. Of this number 401 cases were concluded. In short, the backlog has been reduced from 408 to 286 cases in all the Criminal Assize Courts of the country. This is not only a good performance but it is even better when one realizes first that as in the case of the civil backlog and with reduction at this rate, there should be no outstanding committals awaiting trial within three years; and secondly that there were, as I have mentioned before, several months when there was need for only one criminal assize court to sit in San Fernando. In fine, the backlog of cases has been reduced from 408 to 286 with fewer courts sitting. As the last feature on the position of criminal cases outstanding at the beginning of a new law term, I would draw attention to the steady yearly improvement in the number of outstanding cases for there were 524 in 1968, 408 in 1969 and 286 in 1970.

I have already noticed the records for civil cases in San Fernando. I am afraid that the records of civil cases for Port- of- Spain do not present as pretty a picture. The inroads that have been made in the number of outstanding civil matters in Port- of- Spain have not been as substantial as in San Fernando. On October 1, 1969, there were 307 outstanding matters, at the end of the law year on June 30, 1970 there were 284 outstanding. There the backlog has been reduced only by 23 cases. Three things might be pointed out, however, there were no additional civil courts last year in Port of Spain

through a lessened number of criminal courts as was the case in San Fernando, the sittings of the courts at Tobago had to be provided for, and the entries of new cases on the general list were usually large last year; there were in fact 291 new cases entered and 314 cases were concluded.

In a gesture gratefully to acknowledge the excellent results achieved by the High Court, I have purposely noticed its performance before referring to the work done by the Court of Appeal. This is not because the records of the Court of Appeal are in any way less satisfactory but because the achievement of the High Court was solid and substantial.

At the end of July 1969 there were in the Court of Appeal 10 outstanding appeals, indeed, these were filed too late in June to be placed on the July list of cases. For the year October 1, 1969 to July 31, 1970, there were 561 cases entered on the lists. The court has disposed of 534 of these cases. Magisterial appeals continue to provide the largest number of cases heard on appeal, i.e. 350, with civil and criminal appeals numbering 92 and 85 respectively. Of the 27 cases outstanding at the end of July 1970 judgments have been reserved in 8 cases and as in the case of the previous year most of the remainder were filed too late in June to be heard before the court entered its official long vacation.

The clamour that is made from year to year for law reform, law revision, new court buildings, improved terms and conditions for judges and magistrates alike must once again be voiced.

From time to time attention has been drawn to the nature of the reform and revision, which is essential if we are to maintain a reputation for a good judicial system. Added to such reforms as often advocated in Family Law and Divorce, and Chattel houses we would recommend for attention far more immediately than questions of the abolition of the death penalty, such matters as provision for compensation for criminal injuries, far more urgently than dress reform, a complete revision of the provisions for jury qualification and service, and if we would add but one more sorely needed revision, we should clamour for legislation that is more protective of the safety of official Court Bailiffs. Over-shadowing all of these I would refer to the need for a more simplified legal procedure. The just claims of many persons are having to be abandoned because the adversary system of litigation is far too cumbersome and expensive for the everyday run of small claims.

At a conference of Heads of Judiciary of the Commonwealth Caribbean held recently in Jamaica at my suggestion an item on the agenda was the simplification, shortening and unification of the Orders and Rules of Court for the territories that should form the Association; on the subject I presented a paper which received the support of all the delegates. The meeting appreciated that the simplification of procedure which is needed is a radical one. In this regard lawyers lag behind their brothers in other professions and of different technologies. Whilst voices may be thus raised against this state of affairs, it is difficult for lawyers to admit that there are occasions when rough justice is better than no justice. There will always be resistance to a change in legal machinery, if I may repeat what I said last year, and there seems to be no organised and operating body which

is concerned to campaign for a replacement of defective parts which damage a country's reputation for good justice.

I will content myself in regard to a separate and worthy building to house a "Law Courts" for the country with saying that "hope springs eternal..." But the administration must be thankful for the smallest of mercies in that monies have been allocated to complete the purchase of the site for a new Hall of Justice, a new magistrate's court room has been built at Charlotteville, Tobago, and a court room has been built at Charlotteville, Tobago and a court room has been added to the complex of magistrates' courts at San Fernando. I regret to say, however, that although completed for some months now these magistrates' court rooms may not be used as they remain devoid of all equipment and furniture. A year ago this appeal for repair and replacement by rebuilding of other magistrates' court buildings was voiced and all that may be reported is the further deterioration in the existing buildings. The common man no where more extensively than at the magistrates' courts level sees the administration of justice in operation. It is not a happy picture that is presented when he approaches the buildings that house our magistrates' courts in this country. Respect for the forces of law and order depends upon many factors, one of them surely must be the image the courts project in the community. This emphasizes the appropriateness of my earlier commendation of the work of the magistrates. I cannot conceive of any professional body of men being more sadly neglected with respect to the terms and conditions under which they have to work and yet remain hard working and loyal. Take a young economist, because in a 'house' that may to some extent be productive of the economy, he is in receipt of a salary, yes, over and

above that the Chief Justice, yet the proper administration of justice at the levels both of the magistrate's court and of the Supreme Court of Judicature is essential if a country is to maintain a reputation for a good judicial system and capture the respect of the citizens for law and order. Economists would have no habitation and no name where there is chaos instead of law and order. I strongly urge early and anxious consideration and revision of the terms and conditions of service of that body of professional gentlemen, the magistrates. I have said enough using the analogy of my economist friend to suggest that the same attention must also be given, and early, to the position of all judges.

No report, however brief, on the work of the administration of justice over the past year could in justice fail to mention the work of the Review Tribunal appointed under the Emergency Powers Act to investigate appeals of persons detained under the provisions of the Act. The work of this Tribunal has evoked considerable and well-merited praise and commendation. I add the thanks and appreciation of the administration to the Chairman and Members for their devotion, their solid, erudite and efficient work over many arduous months on complex cases. And for the community and myself, I would extend to the Chairman and Members of the Tribunal my appreciation and gratitude for an unfamiliar duty admirably performed.

To what may we now look forward? The nation can confidently expect that the high standards set in the past by the judges and magistrates will be maintained in the year ahead. Indeed, it was, throughout the difficult period of turmoil earlier this year, most reassuring and gratifying that the confidence and trust reposed by the nation in the

administration of justice never diminished in the slightest degree. The courts will face severe burdens in the months ahead but all will be well for we know we can count on the goodwill and cooperation of all who labour in the field of the law and all who hold the due administration of justice as of paramount interest and concern.

Still more respect will be had for the administration when it is provided with buildings, at the both levels, the judiciary and the magistracy, suitable for the important work it does and in consonance with the majesty of the law, and the respect which it should command.

The different administrations of the Commonwealth Caribbean territories await with interest the probable formation of an Association of Commonwealth Caribbean Judges with the object of maintaining the rule of law and encouraging and promoting the independence of the judiciary and the improvement of the administration of justice in the participating territories, in furtherance of the recommendations of a conference held last month in Jamaica of Heads of the Judiciary of this region.

In July last, Trinidad and Tobago participated in a Conference in London with the object of the formation of a Commonwealth Magistrates Association. This Association was formed and for the implementation of membership we will have to pay an annual subscription. In January 1971 at New Delhi there will be held the Commonwealth and Empire Law Conference and also a conference of Commonwealth and Empire Chief Justices. A great deal of good can result from such associations of judges, magistrates

and lawyers, for the time is surely upon us when the lawyer may no longer leave all advance and progress to the counterparts in other professions and technologies.

It is by this exchange of experiences and pooling of knowledge that advance and progress may be achieved.

Much in the law requires reform and revision and what I said last year sadly still remains true. I repeat “unreformed procedures combine to defeat the object of expeditious justice, and no change in the legal machinery ... damages a country’s reputation for good justice”. Lawyers must think in terms of advances in the substantive law as well as in rules of practice and procedure, and must so persuade their brothers in the law-making body of the country, if they are to keep pace with their professional brethren in other spheres of human endeavour. So once more I call for the early functioning of the Law Reform Commission and for much needed law revision.

It is essential to the stability of our country that all recognize, as a former Chief Justice once said, the place and function of the Law and the Courts. It is, therefore, of paramount importance that the administration of justice be not starved of the necessary facilities and amenities, buildings and equipment for the efficient performance of its all-important and all essential duties. Over and above this, is the sad reflection that Trinidad and Tobago has in its compensation of its judges and its magistrates lagged behind all other Commonwealth Caribbean territories and most other countries elsewhere reasonably comparable in size and in economy.

It would be a mistake to think this state of affairs i.e. the inadequately remunerated posts of judge and magistrate, is happily accepted and can be allowed to continue indefinitely. The maintenance of peace and order of this country rests largely upon and is the special province of the administration of justice and so the administration should present such an image, that the ordinary citizen becoming increasingly aware of the responsibility he bears for the welfare of the country, feels duly impressed, as has been said, not only with the majesty of the law but with the law's intent and meaning. Without law there can only be chaos.

I thank all my brethren for their sustained help and their promise of continued cooperation in the future in the performance of our common tasks. In my thanks for cooperation in the administration I include first and foremost and most gratefully the magistrates, a group which dedication alone keeps going, I also thank the Police and Probation Services and of course the staff of all these bodies and all persons who have demonstrated loyalty and goodwill and have the real interest of justice at heart. We bid peace and good health in his retirement to Inspector S.E. Moseley after over 17 years loyal service as orderly to five Chief Justices.

The main duty of the courts is to see that the great directive principles embodied in the Constitution are preserved. Their preservation is no easy matter, hence we go into the new term bent upon straining every nerve and muscle in the performance of our tasks and in the earnest hope that what the law stands for will be fully recognized and the task performed by its loyal servants will be appreciated.

I thank you all for being here this morning and wish for you in the year ahead, health and prosperity. We will now adjourn until tomorrow.