

# INTRODUCTION TO THE LAWS AND CONSTITUTION FOR THE ISLAND OF ST HELENA (1682)

by Trevor W. Hearl

Conservation work on a 17th Century document sent from St Helena to the Public Record Office in London for restoration has revealed a new source for the early history of one of Britain's oldest colonies. Written in Secretary Hand on two large sheets of vellum, together measuring 212 x 222 cms (18.5 by 33 inches), with weighty seal beneath, it had long hung in the hall of The Castle at Jamestown until moved a few years ago to more public view at the St Helena Heritage Society's new Museum nearby. There, signs of deterioration caused concern as it was thought to be the Colony's Royal Charter of 1673 confirming King Charles II's grant of the Island to the Honourable East India Company. Indeed, local historian Emily Jackson had depicted it as such in *St Helena, the Historic Island* (1903), and though in 1935 Chief Secretary G.C. Kitching warned in *The St Helena Magazine* (No. 404) that it was not a Royal Charter, his words went unheeded. Even Philip Gosse seems to have overlooked it while researching his classic *Island history St Helena 1502-1938*, perhaps misled like earlier historians Emily Jackson in 1903 and John Melliss in 1875, by the Colony's first historian Thomas Henry Brooke who in 1808 published St Helena's most important muniments in his *History*. Ironically, he omitted the one to become, by sight if not by content, the most familiar to Island residents and visitors.

The document in fact proves to be *The Laws and Constitution for the Island of St Helena* issued "by the Governour and Company of Merchants of London trading into the East Indies" on 10 March 1682 (Old Style 1681). Historians can now see the legal foundation on which the Company sought to establish a well-ordered community at its lonely Atlantic outpost At Cromwell's behest "John Company" had settled the uninhabited island in 1659 as a fortified mid-ocean haven for its homeward-bound Indiamen. Charles II confirmed its rights in 1661, and again in 1673 after a five-month seizure by the Dutch. Early settlers included refugees from the Great Fire of London (1666), but even by 1682, with a garrison and imported slaves, it was a colony of only 500 souls, administered by a Governor and three-man Council, and ministered to by a chaplain-schoolmaster and a surgeon.

The Company's laws for St Helena reveal how far 17th Century English law was based on the Ten Commandments, a precedent London's puritanical merchants were doubtless pleased to follow. Thus, "To the Intent Religion, Morality and Virtue may be countenanced and Vice suppressed and punished," penalties were decreed for "swearing and taking the name of God in vain" (one shilling (5p.) for each offense after "public admonition"); for "profaning the Lord's day by travelling, working, gaming or other unlawful pastimes", five shillings (25p.) for each

offense after reproof; for “fornication, uncleanness and adultery”, punishment “not contrary to the law of England”; for bearing false witness, to pay damages and be pilloried; for theft, repayment of threefold the value of goods stolen and loss of estate, to stand in the pillory, be “whipt from thence to the prison” and sent by the next ship to England; and for “wilful murther”, death, “the manner to be at the discretion of the Governor and Council”.

But the misdeeds against which the Company’s lawyers had to legislate ranged well beyond the Ten Commandments. In its early years St Helena was an unruly infant and penalties reflected behaviour causing concern in London. For example for drunkenness, “destructive both to the bodies and souls of men”, fines rose to five shillings (25p); for quarrelling among equals, 20 shillings (£1); for striking an official on duty, £5; for absence, or sleeping on duty, a month’s pay.

Corporal punishment, “not extending to the taking away life” - though not always limb - was to be inflicted for such offenses as striking a superior officer; for quarrelling on guard; for counterfeiting documents; for cheating “another of lands, goods or monies”; or for embezzling public stores. Although only a 12-man jury could convict, the form of punishment was a Governor’s decision, “with the advice and consent” of the Council and “agreeable to the law of England”. Thus “mutinous” settlers were hanged in chains, slaves burnt at the stake, branded, or had hands cut off, as in England where highwaymen hung from gibbets and witches were burnt - 17 in Essex alone in 1676. Indeed, penalties were rather milder in St Helena, even prompting the Directors to complain of leniency, as in 1686 “for letting those Blacks pass with whipping which an Englishman would have been condemned to die for” - saved perhaps by owners’ vested interests! Whatever horrors St Helena’s slaves had known in their homelands, the Company’s European servants and settlers would expect to risk the gallows and gibbet, the branding iron and cat-o’-nine-tails within a penal system devised “according to the laws of England”. Punishments were meant to deter, and the Governor was expected to use his discretion accordingly.

The Laws of 1682 were not all about crime and punishment, however. They had positive elements intended, as the preamble stated, to ensure “good government” and the “establishment of Justice”. It was fondly hoped that a God-fearing, moral community would result from observance of the Sabbath, the teachings of the Chaplain, and loyalty to King and Company. Justice would be “administered impartially without favour or affection” in a Court of Judicature at Quarter Sessions through trial by jury with the Governor as Judge. Business would be managed by an “able, honest and understanding person” as Sheriff. Among other aspects of note, persons of quality - “who should be examples to others” - were to be more heavily punished than those “of a meaner rank”; those unable to pay fines or damages must be given forced labour until the amount was worked off; and in law, slaves were not differentiated from others. Unfortunately, *de jure* does not necessarily prove *de facto*.

The Company’s immediate concern at the Island’s “lawlessness,” however, is revealed in its comments on interlopers, the rivalry between London merchants over

East India trade having become intense by 1681. The Company's indignant appeal to loyalty reflects its dependence on Royal favour - Charles II had granted it Bombay from Catherine of Braganza's dowry in 1668 - as well as the threat to its profits. It added insult to injury for interlopers' ships to use St Helena, where only its own, and ships surrendering to the Company or trading "to Madagascar ... for Negroes", were to be "entertained".

But St Helena's settlers felt little loyalty toward the Company. "Feudal" conditions of settlement, based on military service in return for a few acres and a cow, were resented since the Company expected them to develop this mid-ocean market-garden into a plantation economy. A mutinous spirit was further provoked by Governor Blackmore's despotic rule (1678-90) - "Noe King desires more obeydiance nor servitude", complained Surgeon Moore in 1682 (Hearl, T.W.: *A 17th Century Surgeon at St Helena*, p. 12). The new Laws, coupled with advice not to trouble "with nice poynts of the common law of England but [...] to adjudge of all cases in a summary way, according to equity and a good conscience [...]", made him even more of a tyrant. "Ferocious reprisals" meted out to miscreants in 1683-84 are quoted by John Keay in *The Honourable Company* (1991, pp. 179-80) "The Governor turned his guns on a crowd who presumed to ask for the release of one unjustly imprisoned; 17 protestors were either killed outright or wounded; the rest were rounded up and 19 condemned to death [...]". The widow who protested got "21 lashes, ducked three times at the yard-arm and thrown into prison". Martial Law followed (by Royal Charter, 9 August 1685) and within six months, 14 more had been condemned as rebels though one, Gabriel Powell - forebear of a Speaker of the South Carolina Legislative Council - escaped. A petition from "the mournful daughters of St Helena" led the House of Commons to condemn the "butchers" and order an enquiry into East India trade. This strengthened the interlopers' case and in 1702 an agreement was reached to form a United Company of Merchants of England trading to the East Indies.

The Laws and Constitution of 1682 thus proved a significant, if scarcely successful, legal instrument in Company and St Helena history. Yet whatever Laws were conceived in London it was clearly beyond the powers of an Island Council lacking legal training and experience of government to produce Utopia in the South Atlantic. It was the Company's first territory, "a colonizing concession of quite incomparable portent", as Keay remarks (*supra* p.129), and its lawyers were still experimenting in Constitution building. A year or so later, in August 1683, the Directors admitted that the document was unsuitable for St Helena, being "for the most part drawn from the Modell of Laws we established upon our Island of Bombay [...]. We think for the Present the Method you are in may do best for our service and the good of the Island". What that "Method" was must be left to a future legal historian to reveal. Meanwhile, this intriguing document is now restored, photographed under ultraviolet light and securely framed against foreseeable eventualities. Sailing southwards aboard the RMS *St Helena* in October 1991, it repeated a voyage first undertaken by the Surat Merchant Indiaman almost 310 years ago.

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