THE JAMAICAN GUN COURT ACT

The Background

In recent years the Island of Jamaica has been plagued with a heavy incidence of crime, much of it of a violent nature. A centre for the production of marijuana and the distribution of stronger drugs, and enjoying the proximity of a rich market for such illicit goods, Jamaica's position in the Caribbean has meant that it has been caught within the ambit of a rich and hedonistic society to the north — a society seeking and obtaining pleasure in the escape from reality in drugs and the illusions they offer.

Those engaged in this illegal traffic are said to make much money. Some are paid in cash, others, it seems, in firearms and automatic weapons. The risks are great, the profits considerable. In a local society subject to the stresses of poverty and illiteracy, the incidence of crime inevitably remains high.

On the periphery of the drug traffic there has, therefore, emerged a flood of firearms: weapons that fall into the hand of desperate men, many of them the victims of the economic ills affecting the Island. In 1969 there were reports of 153 cases of murder, 54 of manslaughter, 9405 of wounding and assault occasioning bodily harm; 429 of rape and carnal abuse, 751 of burglary, and 2490 of robbery and larceny from the person. Figures for 1970 reported 130 cases of murder, 60 of manslaughter, 9875 of wounding, etc., 482 of rape and carnal abuse, 802 of burglary and 3160 of robbery and larceny from the person.[1] All this, out of a population (1.86 million on the provisional 1970 census count) about the same size as that of Singapore.

The general increase in the incidence of crime in 1970 appears to have persisted until 1974, when conditions in the capital of Kingston became a matter of public concern. By the end of 1973 it was hazardous for citizens to be abroad after dark; motorists were encouraged to drive with closed windows to their cars, and not to linger at traffic lights late at night; well-armed criminals developed a tendency to use their weapons promptly upon encountering difficulties in the matter of robbery: and the situation was moving towards that of a public emergency.

In consequence, early in 1974 the Firearms Act, 1967 was amended, as part of an effort to diminish the incidence of crime in the country, and it became an offence for a person lawfully in possession of a firearm to lose it through negligence; about the same time a new law, the Suppression of Crime (Special Provisions) Act, 1974, gave the police enhanced powers in certain areas of the Island; and finally there emerged the Gun Court Act, 1974 (8 of 1974).

1. Handbook of Jamaica, 1971, p. 126.

As the President of the Jamaican Court of Appeal observed in 1974, "it is a matter of general public knowledge that in recent years crimes of violence in which firearms, unlicensed or illegally obtained, were used gave cause for grave public concern and indeed alarm. The several measures taken over the past 6 or 7 years to control the rising incidence of crimes of this nature have proved unsuccessful. Persons were shot and killed by day and by night in the course of robbery, rape and other offences or for no apparent reason. Witnesses for the Crown at the trial of persons accused of such crimes were often intimidated. Victims of the crimes themselves were not infrequently killed or shot at most probably with a view to their elimination as eyewitnesses who could testify against the perpetrators of those crimes. Even Counsel for the Crown in one case was not immune from attack by the use of a firearm. Intimidation and attack did not come only from the offender. It came also from associates of the offender especially where the offender was a member of a gang. It was in such a situation that eventually the legislature enacted the Gun Court Act, 1974...." Before we review the Act, however, it is necessary briefly to mention certain provisions of the Constitution.

The Constitution of Jamaica

The Constitution of the Island is set out in the Jamaica (Constitution) Order in Council, 1962,[2] made under the West Indies Act of 1962. That Constitution follows principles familiar to those who have observed the evolution of colonies to independence, and who have noted the powerful influence of India's Constitution upon that process. One chapter sets out the "fundamental rights and freedoms" in a manner certainly much more comprehensive than, for example, Part II of the Malaysian Constitution; torture and inhuman or degrading punishment or other treatment are absolutely prohibited (section 17) save to the extent that the punishment was lawful in Jamaica immediately before independence. Justice must be administered in public (section 20), although a court may exclude persons other than the parties to proceedings and their lawyers wherever (amongst other cases) the court is "empowered or required by law to do so in the interests of defence, public safety, public order, public morality... ." Enforcement of the protective provisions of the Constitution can be secured by an application to the Supreme Court (section 25). The Constitution establishes a Supreme Court (section 97) but does not expressly vest in that court the judicial power of Jamaica. The conduct of prosecutions is entrusted to an independent Director of Public Prosecutions (sections 94 to 96) ; and the prerogative of mercy is vested in the Governor-General, "acting on the recommendation of the Privy Council" (section 90), a body of six members established by section 82 of the Constitution.

The Act

The Gun Court Act, 1974 came into force on 1 April 1974. Designed to provide for "the establishment of a Court to deal particularly with firearms offences", the Act establishes (section 3) a court called the "Gun Court". The Court is a Court of Record, sitting in "such number of Divisions as may be convenient", and any such Division may be a Resident Magistrate's Division (comprising one Resident Magistrate),

2. S.I. 1962 No. 1550, Second Schedule.

a Full Court Division (comprising three Resident Magistrates), or a Circuit Court Division (consisting of a Supreme Court Judge exercising the jurisdiction of a Circuit Court) (section 4).

Under section 10 of the Act the Chief Justice must assign to the Gun Court such Supreme Court Judges and Resident Magistrates as he thinks fit: and by section 11 the Minister must assign to the Court such clerks, deputy clerks and other officers as may be necessary. Sittings of the Court are to be held at Kingston or St. Andrew, and "at such other places (if any) as the Chief Justice may... appoint" (section 7).

By section 13 of the Act it is provided that "in the interest of public safety, public order or the protection of the private lives of persons concerned in the proceedings no person shall be present at any sitting of the Court except —

(a) members and officers of the Court and any constable or other security personnel required by the Court;

(b) parties to the case before the Court, their attorneys, and witnesses giving or having given their evidence, and other persons directly concerned with the case;

(c) if the accused is a juvenile, his parents or guardians; and

(d) such other persons as the Court may specially authorise to be present."

Again, the section provides, "in the interest of public safety, public order or public morality", that the Court may direct that the name of a witness shall not be published and that no particulars of the trial (other than the name of the accused, the offence charged and the verdict and sentence) shall be published without the prior approval of the Court.

The Gun Court has been established, as its title indicates, to deal with offences relating to firearms. The Resident Magistrate's Division has jurisdiction to hear and determine offences under section 20 of the Firearms Act, 1967 ,under which unlawful possession of firearms, etc., entails a sentence of five years' imprisonment on summary trial, and life in the Circuit Court), wherever committed, and to conduct preliminary examinations into firearm offences entailing the death penalty; a Full Court Division may deal summarily or on indictment with any firearm offence, other than a capital offence; and a Circuit Court Division has the same jurisdiction as a Circuit Court established under the Judicature (Supreme Court) Law (section 5). However, so far only a Resident Magistrate's Division has been constituted. By section 17 of the Act the Chief Justice may by order designate any Resident Magistrate's Court to be a Division of the Gun Court, and any Circuit Court to be a Circuit Court Division of the Gun Court.

The Resident Magistrate's Division sits in the Gun Court in Camp Road, Kingston: an area significantly close to a military camp. There, surrounded by a double fence of high wire capped with coils of barbed wire and studded with notices ("No Parking or Leaning on Fence") is the Gun Court. At corners of the compound are high sentry towers, numbered, and manned by sentries with automatic weapons. The whole

complex is painted in a dark, ominous red, with dull, dark-red roofs and cream walls, reminiscent of a rather severe prisoner-of-war camp. The psychologists have presumably had a hand in designing the intimidating appearance of the Court, with its bold blunt notice ("GUN COURT") and — also within an adjacent, wired-in compound — the "rehabilitation centre" designed for those convicted by the Court. Within, I am told that the Court itself is carpeted, and not so austere as the usual court or as spartan as its immediate environment might suggest.

Any court before which a case involving a firearm offence is brought must transfer the case to the Gun Court (section 6). As for proceedings in the Gun Court itself, these must be conducted expeditiously: for by section 8 of the Act cases of unlawful possession of firearms must ordinarily be commenced within seven days of the accused's first appearance.

In addition to the peculiarity of a special infrastructure of courts established within the existing judicial framework and for the purpose of dealing with one category of offences, and the curiosities of trials ordinarily to be held *in camera* (a matter said to be as much for the safety of the accused as in the interests of the public) the Act contains a third and even more striking provision. Section 8(2) might, indeed, be said to be the psychological core of the Act. It provides that:

> Notwithstanding anything to the contrary in the Juveniles Law or any other enactment but subject to subsection (3), any person who is guilty of an offence under section 20 of the Firearms Act, 1967 (unlawful possession of a firearm) or an offence specified in the Schedule (the purchase, acquisition, sale or transfer of a firearm) shall, upon summary conviction thereof be sentenced, pursuant to this Act, to be detained at hard labour during the Governor-General's pleasure.

By subsection (3) it is provided, first, that persons under fourteen years of age can only be detained in an approved school or place of safety under the Juveniles Law, and second, that the Court may, on passing sentence of detention, "make appropriate recommendations for the consideration of the Review Board established under this Act".

The Review Board itself is established by section 22 of the Act, which provides that "Save as otherwise provided by section 90 of the Constitution of Jamaica, no person who is detained pursuant to section 8(2) shall be discharged except at the direction of the Governor-General, who shall act in that behalf on and in accordance with the advice of the Review Board." The Board itself consists of five members appointed by the Governor-General, as follows —

(a) a person who is or was a Judge of the Court of Appeal or a Supreme Court Judge, nominated by the Chief Justice, and who is chairman of the Board;

(b) the Director of Prisons, or his nominee;

(c) the Chief Medical Officer, or his nominee;

(d) a nominee of the Jamaica Council of Churches, or any body recognised by the Governor-General as replacing such Council;

(e) a person nominated by the Prime Minister after consultation with the Leader of the Opposition as being qualified in psychiatry.

The Test Case

Shortly after the Act came into force four men were convicted in separate summary trials in the Resident Magistrate's Division of the Gun Court, upon informations charging them with unlawful possession of firearms or ammunition, not under and in accordance with the terms and conditions of a firearm user's licence, as required by, and contrary to, section 20 of the Firearms Act, 1967. As required by section 8(2) of the Gun Court Act, 1974, each man was sentenced to be detained at hard labour during the Governor-General's pleasure.

In the case of *Regina* v. *Martin and three others* the Jamaican Court of Appeal recently heard the appeals of the four men, the appeals being by consent heard together. The case was heard by the Hon. Mr. Justice Luckhoo, P. (Ag.) presiding, the Hon. Mr. Justice Swaby, J.A., and the Hon. Mr. Justice Zacca J.A. (Ag.).

The grounds of appeal related to the consitutionality of the Act, and it was argued —

(a) that the establishment of the Gun Court under the Act of 1974 was contrary to the Constitution, in that Parliament could not lawfully set up a court exercising jurisdiction concurrently with or analogous to that of the Supreme Court, as there could (section 97 of the Constitution) be only one Supreme Court;

(b) that the trial of each appellant *in camera* was in breach of section 20 of the Constitution, and therefore a nullity;

(c) that the sentence imposed —

(i) was contrary to section 17 of the Constitution, and

(ii) was unconstitutional and void in that it was part of a scheme which transferred judicial power from the constitutional judicial officers, and was inconsistent with the constitutional scheme for the exercise of the royal prerogative of review and pardon.

On the first point the acting President, after considering the expected catalogue of cases (*Attorney General for Australia* v. *The Queen and the Boilermakers' Union* [1957] A.C. 288 P.C., *Bribery Commissioner* v. *Ranasinghe* [1965] A.C. 172 P.C. and *Toronto Corporation* v. *York Corporation* [1938] A.C. 415 *etc.*) came to the view that "it would appear therefore that Parliament can validly give as it thinks fit the judicial power in respect of such jurisdictions conferred by law (that is, not conferred by the Constitution) on the Circuit Court of the Supreme Court to the Circuit Court Division of the Gun Court if that latter Court complies with the provisions of sections 98, 100 and 101 of the Constitution of Jamaica." He saw little aid in the two latter cases, on the point in argument, and held that the establishment of the Gun Court was *intra vires* the Constitution.

On the matter of trial *in camera,* the acting President noted that "it would appear that representatives of the Press were permitted to be present during the trials." He considered the question whether the exclusion of the public was *intra vires* section 20(4) (c) (iii) of the Constitution, in the light of section 20 of the Constitution; section 13

of the Gun Court Act itself; *Scott* v. *Scott* [1913] A.C. 417 (the *locus classicus* on the point); and *Stenhouse* v. *Coleman* (1944) 69 C.L.R. at page 470: finally holding that the conduct of the trial *in camera* did not render it invalid.

In relation to the sentence created by section 8 of the Gun Court Act, it was argued (in relation to section 17 of the Constitution) that detention was cruel and inhuman because —

(a) the law imposed a fixed, mandatory sentence of indefinite duration for *any* offence under section 20 of the Act of 1967, although the offence might be nothing more than a technical breach of a term of a firearm licence;

(b) the Act imposed the same sentence of indefinite detention for *all* offences under section 20 of the Act of 1967, although these might differ greatly in their nature, scope and gravity (for example, the same sentence must be imposed on a man of good character as on a hardened criminal);

(c) a sentence of indefinite detention is calculated to create a sense of fear and uncertainty in the mind of a convicted person, as he does not know the severity of the punishment that has been or will be meted out to him.

After considering the meaning of the word "inhuman", the acting President observed that "the history of our jurisprudence establishes that the question whether punishment is cruel reflects the norms of a society at a particular time in its history, and the sort of punishment that might have been socially acceptable in the Middle Ages is not the sort of punishment that is acceptable in a modern civilized society: see *R.* v. *Brown* (1964) 7 W.I.R., per Lewis J.A., at page 49, that in the context of a modern society punishment should have a reforming as well as a deterrent element." Several Cyprus cases of 1961 were reviewed, together with the matter of sentences prior to independence: and it was noted that a sentence of detention during Her Majesty's pleasure had existed prior to independence, and was therefore within the contemplation of section 17(2) of the Constitution.

This did not conclude the matter of argument on sentence, for it was further argued on behalf of the appellants that the scheme of punishment under the Act was unconstitutional in that —

(a) it conflicted with or modified or added to section 90 of the Constitution (dealing with the prerogative of mercy), which required the Governor-General to act on the recommendation of the Privy Council when remitting or reducing sentence;

(b) it interfered with the constitutional right of a convicted person to have his sentence determined by courts established and operated in accordance with the Constitution — subject always to the Governor-General's power of remission;

(c) it effectively transferred to a statutory administrative tribunal performing quasi-judicial functions, namely, the Review Board, the power of deciding the appropriateness of a sentence: which power should be exclusively exercised by the Courts, as a judgment or sentence is an integral part of every criminal trial.

None of these arguments impressed the acting President, and he held that a sentence of detention under section 8(2) of he Gun Court Act was *intra vires* the Constitution; he saw, in the light of section 22(1) of the Act (which opens with the words "save as otherwise provided by section 90 of the Constitution of Jamaica") no conflict with section 90 itself.

The views of the acting President was in the main shared by his colleague, Mr. Justice Zacca. However, the latter expressed the view that insofar as section 4(c) of the Act sought to establish a Circuit Court Division of the Gun Court as a Superior Court, "I would hold that it is *ultra vires* the Constitution," as Parliament could not, under Constitution, establish another Supreme Court. However, he considered the point irrelevant to the appeals, since these had come by way of conviction by the Resident Magistrate's Division of the Gun Court, and "in my view section 4(c) is severable". He held both section 8(2) and section 11(1) of the Act *intra vires* the Constitution.

It was left to Mr. Justice Swaby to dissent, which he did so forcefully and with eloquence.[3] Citing a similarity between the Constitutions of Sri Lanka and Jamaica, he considered *Ranasinghe's* case, together with that of *Liyanage* v. *R.,*[4] *Attorney-General of Australia* v. *R.*[5] and *Toronto Corporation* v. *York Corporation,*[6] and observed: "It is a principle of written Constitutions, like the Jamaica and Ceylon Constitutions that insofar as the legislature is competent to create new courts exercising jurisdiction analogous to an established court of the land whose judges are required to be appointed in a manner specially provided for by the Constitution the appointment of judicial officers to such new courts must also conform with the constitutional requirements". He therefore came to the conclusion that insofar as section 10(1) of the Gun Court Act purported to vest in the Chief Justice instead of the Governor-General acting on the advice of the Judicial Service Commission a power to assign persons to a new court (the Gun Court) "this is a legislative interference with judicial power and therefore unconstitutional and void;" the Gun Court was "unconstitutionally constituted" and the trials of the appellants were "without legal authority and therefore illegal, null and void". The case of the *Attorney-General of Ontario* v. *Attorney-General of Canada*[7] was referred to. As for section 6(1) of the Act (mandatory transfer of firearms cases to the Gun Court) he considered this, too, unconstitutional.

Mr. Justice Swaby considered the Gun Court Act in some detail. Section 11(1) (under which the Minister assigned to the Court such clerks and assistants as the Minister considered necessary) was the subject of scrutiny in the light of the case of *United Engineering Union* v. *Devanayagam;*[8] section 22 (which set up the Review Board) was

3. I fear that this article does less than justice to the views of all three judges; it is based on hasty notes, taken from a lengthy typescript of the three judgments concerned.
4. [1966] 1 All. E.R. 650.
5. [1957] 2 All. E.R. 45.
6. [1938] A.C. 415.
7. [1947] A.C. 127.
8. [1967] 2 All. E.R. 367.

dismissed as *ultra vires* in the light of section 90 of the Constitution (under which the prerogative of mercy is exercised by the Governor-General on the recommendation of the Privy Council), since it was impossible to share the jurisdiction of the Privy Council and the Review Board; as for section 13 of the Act (relating to proceedings being generally *in camera*), Mr. Justice Swaby considered that this section (though couched in the terms of section 20(4)(a)(ii) of the Constitution) reversed the normal principle (of public admission) and was therefore unconstitutional and void. Indeed, he took the view that sections 3(1) and (2), 4(c), 5(3), 6, 9(b) and 17(1) of the Act were in excess of the powers of the legislature, and therefore unconstitutional; section 10(1) of the Act was also unconstitutional, as were sections 4(a) and (b), 5(1) and (2), 17(2), 11 and 22. As if this formidable catalogue of legislative error were insufficient, section 8 invoked a special criticism. "I am unable to understand," observed his Lordship, "why the courts which almost daily are entrusted with increasing judicial responsibilities should be deprived of the discretion of meting out to offenders whom they see and know and have an opportunity of assessing their character and propensities, punishment justly suited both to the offences and offenders." There, then, is a fine definition of one aspect of the judicial power, to add to that in *Liyanage's* case. He added that it was "appreciated that at the time of the enactment of the Act the State was confronted with a crippling problem of gun crimes and that the Government beset with a grave situation took measures to deal with the situation as seemed appropriate and suited to the conditions thinking, one must presume, that it had the power to do so.... These considerations, however, are irrelevant and can bestow no validity to legislation which infringes the Constitution."

In this wise, therefore, did Mr. Justice Swaby seek to demolish the Gun Court Act, leaving little of use behind him. A minority of one, his views became relevant on the next appeal, which followed hot upon his words. Even before the Judicial Committee of the Privy Council had the misfortune to be seised of any appeal, a fresh appeal arrived at the Court of Appeal: an appeal in which not only the validity of the Act would be called in question, but also the power of the Court of Appeal to overrule its previous decisions. Let us now turn to these proceedings, inconclusive although they may be.

A New Appeal

Early in November 1974 the Jamaican Court of Appeal faced a fresh appeal (by one Trevor Jackson) on lines similar to those of the earlier appeal, but now subject to further confusing aspects. To dispose of the new series of conundrums, the Court of Appeal consisted of two of those who had heard the earlier appeal, Mr. Justice Swaby and Mr. Justice Zacca (acting). The third member of the Court was Mr. Justice Graham-Perkins.

Arguments on the new appeal inevitably centred on the matters of whether the Court of Appeal was bound by its own earlier decision, and the issue of severability: although the Attorney-General took a point *in limine*. The appropriate remedy, suggested the learned Attorney, lay by way of section 25 of the Constitution, rather than by way of appeal. Under this section ("enforcement of protective provisions")

an application could be made to the Supreme Court, to hear any application in which it was alleged that any of the provisions of the Constitution relating to fundamental rights and liberties were being or likely to be contravened. The Court rejected this argument, and the appeal continued on its merits.

On the issue of *stare decisis* it was argued on behalf of the appellant that for four basic reasons the Court of Appeal could be justified in examining its earlier decision and reaching a different conclusion on the constitutionality of the Gun Court. These reasons were as follows —

(a) The Court of Appeal in Jamaica was not bound by the doctrine of *stare decisis* to slavishly follow a previous decision of the Court which it considered to be wrong, either in a civil or criminal matter.

(b) Even if the Court of Appeal in civil matters was bound by its previous decisions (which counsel did not accept) in a criminal matter involving the liberty of the subject the Court of Appeal was not bound by a previous decision turning on a misunderstanding or misapplication of the law.

(c) The decision of Mr. Justice Zacca, to the effect that a part of the Gun Court Act was severable, was arrived at *per incuriam* and without the benefit of argument or the citation of relevant authority.

(d) Where a particular decision has a rationale which did not command the assent of a majority, it was not in any event binding in a subsequent matter.

These propositions, put forward on behalf of the appellant, were also reviewed by the Director of Public Prosecutions, in contending that the earlier decision must stand. Noting that the Court was "the highest court in the land", he offered "five pre-requisites which permitted the court to say that in certain circumstances it should not perpetuate an error made in a previous decision, *viz.,*

(a) If the *ratio decidendi* is obscure;

(b) If the particular precedent is in conflict with a fundamental principle;

(c) If there are two conflicting decisions of the Court;

(d) If the previous decision was given *per incuriam;*

(e) If the principle laid down in the earlier decision was too wide."

These considerations can be compared with those referred to by Wee Chong Jin, C.J., in *Mah Kah Yew's* case[9] where he observed that decisions of the Court of Appeal on questions of law are regarded by the Court of Appeal as binding on itself, except where the decision was

9. *Mah, Kah Yew* v. *Public Prosecutor* [1971] 1 M.L.J. 1, in which relevant authorities on the doctrine of *stare decisis* are reviewed. Only in its Law Report of February 10, 1975, was the *Times* newspaper able to announce, in a dramatic caption to *Miliangos* v. *George Frank (Textiles) Ltd.,* the long-awaited news: "Court of Appeal bound by its own decisions."

given *per incuriam,* or conflicted with another decision of the Court or of the House of Lords: adding, however, that "in cases involving the liberty of the subject, the Court does not regard itself as bound by its own previous decisions, and if on reconsideration, in the opinion of a full court, the law has either been misapplied or misunderstood in a previous case and in consequence a man has been wrongly sentenced it is the duty of the court to consider whether he has been wrongly convicted *(per* Lord Goddard in *Rex* v. *Taylor* (1950))".

On the aspect of Mr. Justice Zacca's view, that section 4(c) of the Act was severable, much argument took place. Counsel for the appellant (Mr. Ramon Alberga, Q.C.) put forward six principles aimed at establishing the invalidity of the whole Act. These principles may be of interest and I set them out here, as reported in the *Daily Gleaner* (11 November 1974) :

(a) The question of severability is one of interpretation and legislative intent, and unless the legislature says so expressly and clearly the presumption is that it intends a statute which it enacts to be effective as a whole.

(b) A portion of a statute is held severable only when it can stand alone, and the court is able to see and declare that the intention of the legislature was that the part pronounced valid should be enforceable even though the other part should fail.

(c) The doctrine is never applied when the effect of its application would be to substitute for the law enacted by the legislature one which it may never have been willing by itself to enact. The court does not make new law nor re-write statutes, and if by severing results not contemplated by the legislature will be produced, then the entire statute must fail.

(d) The objectionable part of the statute cannot be held severable unless it appears that legal effect can be given to it.

(e) Even where the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole the invalidity of a part will result in the failure of the whole.

(f) If what is left after omitting the invalid portions of an Act is so truncated as to be in substance different from what it was when it emerged out of the legislature, the statute will be rejected in its entirety.

It is clear that two judges of the Court of Appeal, in the test case, had in effect found that the institution of the Circuit Court Division of the Court was invalid: but as the Director of Public Prosecutions pointed out, there had been no complainant from that Division of the Gun Court. "The unusual feature of all three Divisions (of the Gun Court)", observed the Director, "is its Island-wise jurisdiction", and "the purpose of the legislation was to centralize the trial of persons charged with firearm offences. The second intent of Parliament was to provide for expeditious trials of persons charged with firearms offences.... The third intention of Parliament was in the matter of sentence."

Conclusion

In all — I do not know the outcome of the second appeal — the issue of the constitutionality of the Gun Court itself at least has now been the subject of thorough argument. Whether the Gun Court itself has achieved the purpose for which it was established only time can tell; and there are not wanting those who see it as tackling the symptoms rather than the disease. Indeed, a writer in a Kingston newspaper[10] has commented of the Gun Court while it was "a good idea when it was first instituted — even if the psychologists' recommendation about the colour seemed singularly ineffective or inept — it did seem to provide a breathing space. But, if its institution was meant to stop or reduce the number of crimes in which guns were used (and not to hold other persons who could not be convicted on other grounds) isn't it time that there was some re-thinking? It is not achieving that effect and neither I nor the public will be much impressed with the retort, "Think how bad things would be if there weren't a Gun Court !" Far better to scrap it than to have the Privy Council in Britain ruling against it, as may well happen in the not too distant future. But that is merely an additional reason for scapping it, the main one being that it has failed in its purpose, as looked at from a long-term basis. The present gun-carrying criminals whose exploits make news week after week are clearly not deterred by it and they might therefore well be dealt with on the basis of previous laws, with the judges, if they think fit, applying such laws as severely as possible."

However, these are issues of policy; and while the Gun Court Act remains on the statute book its validity must remain a matter of acute concern to Jamaican lawyers. The outcome of any appeal to the Privy Council should prove of interest not only to Jamaica, but to the rest of the Commonwealth.

Colin Gregory's concern is understandable. Little by little can liberty be whittled away — often for the best of apparent reasons. That the vast majority of the people of Jamaica support the Gun Court Act is, I believe, a fact; and that being so, one wonders whether (*pace* Malaya, in 1960, when the state of emergency was wound up) it might not have been better first to amend the Constitution, to put the validity of the new legislation beyond doubt. To declare a state of public emergency — even if justified — would not have assisted an economy deriving much benefit from tourism; and that solution to the problem was, it must be assumed, never seriously in contemplation. However, the machinery for amendment provided by section 49 of the Constitution itself is tortuous and complex, and is unlikely to be put in motion unless all other means of legislative action have failed.

In the meantime the Gun Court continues its work. The issues raised by the test case offer a happy hunting ground for the teacher and student concerned with fundamental rights and freedoms. In its apparent collision with the Constitution the Gun Court Act poses nice

10. Colin Gregory, in the *Daily Gleaner* of 14 November 1974.

questions on the issue of severability of statutes. Inconclusive as these notes are, I hope that after the appeal process has been exhausted, and when authoritative reports are available, we can take another and a closer look at this curiously original statute. In the meantime, I hope the foregoing will offer some stimulus for discussion to those interested in the extent of the judicial power, the nature of punishment, the prerogative of mercy and the severability of statutes.

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