

CHAPTER V

THE CUTTING OF ONE CONSTITUTIONAL GORDIAN KNOT
AND THE TYING OF ANOTHER:

The Recent Agony of Anguilla, Nevis and St. Kitts

It has been widely acknowledged that as long as the islands of St. Kitts, Nevis and Anguilla comprised a common political and administrative unit under the name of St. Kitts/Nevis/Anguilla, there was implicit in that formation a constitutional Gordian Knot. As we shall see, Nevis has tried hard ever since 1882 to cut that Knot; and more recently Anguilla has made every effort to do the same. This chapter will show how at last Anguilla succeeded and is now, in a manner of speaking, an "independent colony". But a new constitutional Gordian Knot was tied when St. Kitts and Nevis entered into a novel type of federation in September 1983, becoming at that time the last of the six Associated States in the Commonwealth Caribbean to attain independence. We shall deal firstly with Anguilla and then address the constitutional position of the independent state of St. Christopher (or St. Kitts) and Nevis.

A.

ANGUILLA

A History of Neglect: Its Eventual Secession and Beyond

Introduction

In a previous volume the author tried to convey to his readers that Anguilla had experienced centuries of arbitrary buffeting from the Colonial Office and almost total neglect from all quarters.¹ The record shows that at the time when the St. Kitts Legislature reluctantly agreed to have Anguilla annexed to St. Kitts, one of the conditions laid down was that the arrangement should entail no financial commitment by the larger colony; and although this particular condition has never, to the knowledge of the author, been specifically adverted to, St. Kitts in fact did everything to fulfil the condition to the letter, as the following further historical details relating to Anguilla will fully demonstrate.

During most of the nineteenth century when communication between the two islands was uncertain and irregular, Anguilla usually had as its representative in the Legislature a *Kittitian* with neither knowledge of, interest in, nor commitment to the affairs of Anguilla; and the writer has been informed by a former Premier of the state that as late as 1937 Anguilla was represented by an *Anguillian* who was resident in St. Kitts and was in fact in charge of a sugar plantation there. He would visit Anguilla about once a year.

1. See Phillips, *Freedom in the Caribbean*, chap. IX, pp. 98-106.

A Short Historical Summary

But to go back one century.² From 1825 and until the end of that century the chief official on Anguilla was a Stipendiary Magistrate who was paid from imperial funds. He combined the functions of President of the Vestry with Dispenser of Medicines. The then Vestry comprised the Stipendiary Magistrate, the Rector of the Anglican Church (*ex officio*) and eleven members elected by male inhabitants paying rates and taxes. The Vestry had power to impose rates and taxes; to supervise the maintenance of public roads; to regulate the salaries of public officers and generally to deal with local matters. In so far as a civil service was concerned, there was at that time a small number of public officers in the island operating by prescription. According to the Colonial Office records, the Anguillans displayed little evidence of civilisation and they continued "to dream life away without a thought and without a care in a state of perfect happiness" in conditions of semi-barbarism.³

The Anguillan Court in its summary jurisdiction was presided over by the local Stipendiary and a Justice of the Peace chosen from the total local Commission, which comprised four Justices of the Peace. The Magistrate also presided alone over a petty debt court. High Court matters were dealt with by the Chief Justice of St. Kitts, who was paid an additional fee from imperial funds for this service. It should therefore come as no surprise to hear that during the nineteenth century there were many complaints from Anguilla concerning difficulties and delay in securing judicial remedies on the island. One interesting case was that of a William Fleming, a landowner resident in England, who experienced considerable difficulty in recovering lands which were in the possession of tenants as licencees. He was finally able to secure redress and to enter into possession of his lands in 1863 after a delay of three years, during which time the Court had in fact not sat at all. Thereafter, provision was made for an annual sitting of the High Court whether or not any case appeared on the list.

Life must have been dismal, too, for the Stipendiaries, as is evident from two cases. In 1853 it was necessary to remove one Pickwood (who had served in this capacity in Anguilla for many years) to one of the two magisterial districts of St. Kitts proper, because it was discovered that the utter solitude of the place had a most deleterious effect upon his mental, no less than his physical, health. It was then arranged that one of the other St. Kitts magistrates should be sent to Anguilla whenever emergencies arose and especially during the absence of the Rector.

After Pickwood's death, it was decided that Dr. Isidor Dyett, formerly in temporary charge of the Virgin Islands, should be appointed to Anguilla. Dyett's reaction was violent. He bemoaned the fact that his 32 years of faithful public service should not be considered worthy of "some better

2. Once more I express my indebtedness to Mr. Anthony Phillips, Lecturer in History at the University of the West Indies, for having permitted me to draw upon his work for the historical data in the following pages stating the position in Anguilla up to 1871, from an unpublished thesis presented to the University of London for an M.A. degree.

3. See C.O. 239/99 1856, June, No. 22.

fate, some happier lot, than that of a hopeless immolation at a place like Anguilla".⁴

When Pickwood died in 1862 and before Dyett's appointment, Benjamin Pine, Lieutenant-Governor of St. Kitts, had visited Anguilla to urge the candidature of Richardson, the Senior J.P., as Stipendiary. He also then took the opportunity to make two additional proposals, viz.,

- (a) that an independent executive authority should be set up on the Island; and
- (b) that Anguilla should be separated from the St. Kitts Legislature as it had been before 1825, and its Vestry replaced by a local legislature of six to eight members, half elected and half nominated.

Pine felt that such an arrangement would meet with the approval of the people of Anguilla since they were not adequately represented in the St. Kitts Legislature. He pointed out that because no Anguillan ever attended meetings of the Legislature, the affairs of the island received little or no notice. The Lt.-Governor urged that the Vestry was too large and unwieldy and its constitution was defective. A local legislature, he felt, would do the trick. But Sir Henry Taylor in the Colonial Office poured scorn on the idea of an Anguillan Legislature. "I should fear," said Taylor, "that the interest which very few Anguilla negroes would exhibit might be much more lively than enlightened."⁵ Accordingly, Pine's proposals were ignored by both the then Governor of the Leewards (Hamilton) and his superiors in the Colonial Office. However, the Vestry was not prepared to let the matter lie and shortly afterwards it recommended that its constitution should be amended to grant the powers of a municipality jointly to the Magistrate, two elected members and two nominated members, who would enact laws subject to the approval of the Lt.-Governor of St. Kitts. Although Governor Hamilton commended this proposal, the Colonial Office would have none of it.

It would appear that the first native Anguillan to enter the St. Kitts Legislature was E.L. Carter, a proprietor and cotton grower elected a member in April 1866. This was long overdue and the beneficial results revealed themselves immediately following his election: there was a spate of legislation advantageous to Anguilla. Acts were passed to render the transfer of land easy and inexpensive. Legislation affecting the procedure to settle claims to land was also put on the statute books.

In 1867 an Act was passed to amend the constitution of the Vestry: thenceforth, instead of a membership of 13 there would be one of seven, viz., the Stipendiary Magistrate, three nominated members and three elected members.

Thus by the time the Leeward Islands Federation of 1871 came into being, steps had already been taken gradually to integrate Anguilla into St. Kitts from a legislative point of view, and relations were already very much on the improve, relatively speaking. But this does not mean that conditions in Anguilla were much better than at the beginning of the

4. A. Phillips, at p. 253.

5. *Ibid.*, at p. 252.

nineteenth century. Anguilla therefore did not raise any objections to joining the Leeward Islands Federation. Indeed, the islanders did not seem very much interested one way or the other.

On the other hand, Nevis objected strenuously. Sir Benjamin Pine, who in 1869 had returned as Governor of the Leewards, had a very difficult time persuading the Legislature in Nevis that the Union with St. Kitts was desirable. Indeed the Leeward Islands Federation had been established only after some display of force and much petitioning by Nevisians. When eleven years later there was imposed an amalgamation between Nevis and St. Kitts this was even more bitterly resented by the Nevisians.

By 1873 the Anguillans had petitioned the Colonial Office requesting that the island be administered directly from Britain. It was then submitted that Anguillan trade was affected and that the cost of consumer goods had increased by virtue of rule from Basseterre (the capital of St. Kitts).

The interests of Anguilla, its resources and capabilities of development are not understood . . . by the [members of the] legislative body of St. Christopher who are either strangers to us, ignorant of the community, careless of their wants, and therefore unequal to discharge . . . the important duties of legislation for us. . . this legislative dependence on St. Kitts can in no sense be called a legislative union, has operated, and continue[s] to operate most injuriously against us, and is mutually disliked.⁶

The position in 1882 was that St. Kitts accordingly found itself with two unwilling, adopted children—neither adopted at the wish of their then mother, St. Kitts.

A New Era

Such was the chronic sense of grievance of the Anguillans even at the time that the author assumed the position of Officer administering the unitary colony of St. Kitts/Nevis/Anguilla on 1st January 1966. Indeed it can reasonably be stated that all the revolutionary happenings between 1967 and 1976 were clearly the culmination of that pent-up frustration. A full account of these happenings is documented in various other works⁷ and a brief summary is given in the author's 1977 volume.⁸

A word should now be said of the U.K. Order-in-Council made in 1976 which the Anguillans regard as having brought them 'freedom';⁹ and it should here be pointed out that what follows represents the framework of the present type of colonial constitution that applies to the Cayman Islands, the Turks and Caicos Islands, Montserrat and the British Virgin Islands, of which more will be said later.¹⁰ It is not therefore intended to

6. *Ibid.*

7. See, for instance, a lucid account of these developments by Donald Westlake, *Under an English Heaven* (London: Hodder and Stoughton, 1973).

8. Phillips, ch. IX, pp. 98-106.

9. The Anguilla (Constitution) Order, 1976 (S.L. 1976 No. 50), hereafter called "the 1976 Order".

10. *Vide* chap. VII, *infra*.

repeat these details when the constitutions of those territories are being considered but only to deal with any special points of difference or emphasis.

As the writer pointed out in *Freedom in the Caribbean*, the Foreign and Commonwealth Office of the United Kingdom had in 1975 issued a release to the effect that a new form of administration had to be found, and a new constitution drawn up, for Anguilla under the Anguilla Act, 1971. That statement ended with the words:

HMG can see no better way forward than this arrangement which, while keeping the Associated State formally in being, will also provide for Anguilla a larger measure of autonomy in domestic affairs.¹¹

The Commissioner, appointed pursuant to the 1976 Order-in-Council, was given considerable powers—the identical powers as were usually given to colonial governors under Instructions from the Queen.¹² He was permitted to appoint a Chief Secretary who would be his Deputy whenever he had occasion to be absent from Anguilla for a period of short duration. In the absence of the Chief Secretary, the Attorney General would deputise for him, and in the absence of the Attorney General, such other suitable person as the Commissioner would appoint.¹³

The Order-in-Council also provided for the appointment of an Executive Council consisting of the Chief Minister, two other ministers and two *ex-officio* members—the Attorney General and the Financial Secretary.¹⁴

The Commissioner was obliged to consult with the Executive Council whose advice he was, however, not bound to accept in any matter that in his opinion related to:¹⁵

- a) defence, external affairs, or internal security, including the police;
- b) appointment, suspension, termination of employment, dismissal and disciplining of public servants;¹⁶
- c) any power conferred upon him by the Constitution which he is empowered to exercise in his discretion or in pursuance of instructions given to him by Her Majesty;
- d) any power conferred by any law other than the Constitution which he is empowered or directed, either expressly or by necessary implication, by that or any other law to exercise without consulting the Council;
- e) any matter in which, in his judgment, the service of Her Majesty would sustain material prejudice thereby;
- f) where the matter to be decided is in his judgment too unimportant to require the advice of the Council;

11. Phillips, chap. IX, p. 105.

12. *Ibid.* For typical instructions, see Appendix II, p. 231.

13. See sec. 20 to the 1976 Order.

14. *Ibid.*, sec. 22.

15. *Ibid.*, sec. 27.

16. *Ibid.*, secs. 64 and 65.

g) where the urgency of the matter requires him to act before the Council can be consulted.

Provided that in exercising his powers in relation to.

(i) the matters referred to in (a) above, the Commissioner was required to keep the Council informed of any matters that in his judgment may involve the economic or financial interests of Anguilla; and

(ii) the matters referred to in (g) *supra*, the Commissioner shall as soon as practicable communicate to the Council the measures which he has adopted and the reasons for those measures.

There was to be a Legislative Assembly presided over by the Commissioner until such time as a Speaker was appointed; and comprising a membership of three *ex-officio* members—the Chief Secretary, the Financial Secretary and the Attorney General—with not less than seven elected members, and two nominated members.¹⁷

The Order-in-Council also established a Public Service Commission,¹⁸ as well as a Judicial Service Commission. The power to appoint public officers was, however, vested in the Commissioner, acting after consultation with the Public Service Commission, but in so far as the Chief Secretary, Attorney-General and Financial Secretary were concerned, the Commissioner would act in his own discretion. The Magistrate, Registrar and other officers of the High Court would be appointed by the Commissioner acting after consultation with the Judicial Service Commission.¹⁹

The Commissioner had a power of pardon which he would exercise in Her Majesty's name—"subject to the Instructions given to him by Her Majesty under Her Sign, Manual and Signet",²⁰

It was also in the Commissioner's power to constitute offices.

The reserve powers of the Commissioner in relation to the making of laws are set out *in extenso*:²¹

(1) If the Commissioner considers that it is expedient—

a) in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of Anguilla as a territory within the Commonwealth and all matters pertaining to the creation or abolition of any public office or to the salary or other conditions of service of any public officer); or

b) in order to secure detailed control of the finances of Anguilla during such time as, by virtue of the receipt of financial assistance by Anguilla from Her Majesty's Exchequer in the United Kingdom for the purpose of balancing the annual budget or otherwise, such control rests with Her Majesty's Government, . . .

that any bill introduced or motion proposed in the Assembly relating to the

17. *Ibid.*, sec. 34.

18. *Ibid.*, secs. 64 and 65.

19. *Ibid.*, secs. 66 and 67.

20. *Ibid.*, sec. 75.

21. *Ibid.*, sec. 55.

matters referred to in subsection (1) hereof should have effect, then, if the Assembly fail to pass the Bill or to carry the motion within such time and in such form as the Commissioner thinks reasonable and expedient, the Commissioner, acting in his discretion, may, at any time that he thinks fit, and notwithstanding any provision of this Constitution or of any other law in force in Anguilla or of any rules of procedure of the Assembly declare that the Bill or motion shall have effect as if it had been passed or carried by the Assembly either in the form in which it was introduced or proposed or with such amendments as the Commissioner thinks fit which have been moved or proposed in the Assembly or any Committee thereof; and the Bill or the motion shall be deemed thereupon to have been so passed or carried, and the provisions of this Constitution, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly:

Provided that the Commissioner shall not exercise his powers under this subsection without prior written instructions from a Secretary of State, unless in his judgment the matter is so urgent that it is necessary for him to do so before having consulted a Secretary of State.

(2) The Commissioner shall forthwith report to a Secretary of State every case in which he makes any such declaration and the reasons therefor.

(3) If any member of the Assembly objects to any declaration made under this section, he may, within fourteen days of the making thereof, submit to the Commissioner a statement in writing of his reasons for so objecting, and a copy of the statement shall (if furnished by the member) be forwarded by the Commissioner as soon as is practicable to a Secretary of State.

As far as assent to Bills are concerned, the Commissioner would assent to a Bill on Her Majesty's behalf or he may refer it for Her Majesty's assent, to be conveyed through a Secretary of State, in which case the Commissioner would signify her assent in due course by Proclamation.²²

In this connection, the *ipsissima verba* of the Instrument might assist the reader to obtain a better understanding of the manner in which the assent to Bills is signified:

When a Bill is presented to the Commissioner for assent, he shall, subject to the provisions of this Constitution and of any Instructions addressed to him under Her Majesty's Sign, Manual and Signet or through a Secretary of State, declare that he assents to it, or that he reserves the Bill for the signification of Her Majesty's pleasure:

Provided that the Commissioner shall reserve for the signification of Her Majesty's pleasure—

(a) any Bill which appears to him to be in any way repugnant to, or inconsistent with, the provisions of this Constitution; and

(b) any Bill which determines or regulates the privileges, immunities or powers of the Assembly or of its members,

unless he has been authorised by a Secretary of State to assent to it.²³

22. *Ibid.*, sec. 56(1).

23. *Ibid.*, sec. 56(2).

Breach of Faith

A word should now be said of the Anguilla Act²⁴ which brought about, as from 16th December 1980, the separation of Anguilla from the rest of the State of St. Christopher, Nevis and Anguilla. It has already been pointed out that although under the Anguilla Act of 1971 Anguilla received a new colonial-style constitution, in 1976 the Order-in-Council which made this possible²⁵ did not affect the integrity of the State of St. Kitts/Nevis/Anguilla. Such interference would never have found favour with the then Premier of the State, Mr. Bradshaw. However, when in 1979 Premier Lee Moore (who had succeeded the late Mr. Bradshaw) was holding constitutional discussions in London, it was agreed that the State Government would offer no objection to the formal separation of Anguilla from the rest of the State and at the same time that St. Kitts/Nevis would proceed to independence in 1980: this being in nature of "a packet".

The regime provided under the West Indies Act of 1967 for dividing an Associated State into two or more separate territories was that no Order would be made to give effect to such division unless it was made at the request and consent of the Associated State concerned.²⁶

However, shortly after this approach was made to Premier Moore, he was replaced following a snap general election by a new Premier, whose government was established by a coalition with the Nevis Reformation Party. The members of this party (as will be seen in a later section of this chapter) had, for a considerable period, been advocating the secession of Nevis from St. Kitts. It would therefore clearly have been injudicious for the Premier to seek to obtain a resolution of the House agreeing to the secession of a sister island in these circumstances. Faced with this situation, Her Majesty's Government openly transgressed the terms of the statute under which the division was to take place: it purported to make the severance unilaterally and without obtaining the required "request and consent"—Lord Trefgarne in the House of Lords justifying the action of the British Government by asserting that the move had the approval of both the Anguillans and the St. Kitts Government.²⁷

This is also a case in which the interests of a part of the state took precedence over the interests of the whole state. In this connection the reader is reminded of the famous aphorism coined by the Commonwealth Office in dealing with Anguilla's affairs in 1967, viz., that it was no part of the policy of H.M.G. that the Anguillans should continue to live under an administration they did not like.²⁸ In a similar way, when the matter of separation was being debated in the House of Lords, Lord Trefgarne was to

24. 1980 C.67 U.K.

25. The 1976 Order referred to above.

26. 1967 C.4 (U.K.), sec. 9(1)(b). In this connection sec. 19(5) of the Act reads as follows: "Any reference in this Act to the request and consent of an associated state is a reference to a request and consent signified by a resolution of the legislature of that state or, if that legislature has two Houses (by whatever name called), by a resolution of each House of that legislature."

27. See *House of Lords Parliamentary Debates*, Volume 996, No. 19, Co. 126.

28. Phillips, p. 105.

put a commitment purportedly made to the Anguillans about the statutory requirement for separation in these words:²⁹

Given our commitment to the Anguillans, we cannot put off the formal separation of the island until a convenient opportunity arrives for the St. Kitts Legislature to take the necessary action.

We thus have the British Parliament—which used to be termed "the Mother of Parliaments"—passing legislation entirely to suit its own convenience and that of a people who chose to tear themselves away from a constituted state by rebellion and in open defiance of everyone.

Secession *de facto*

On 17th December 1980, a U.K. legislative instrument entitled "The Anguilla (Appointed Day) Order" made what the Anguillans regarded as a great declaration, to wit:

[T]he 19th December, 1980, is appointed as the day on which Anguilla shall cease to form part of the territory of the associated state of St. Christopher, Nevis and Anguilla.

Thus, the proposal which, as stated above, was first mooted by Sir Benjamin Pine *as long ago as 1862* when he recommended that Anguilla should be separated from St. Kitts as it had been before 1825, with its local legislature and independent executive authority, had in 1980, more than 118 years later, obtained the approval of the British Commonwealth office.

In 1977 the author, after looking at the 1976 Order-in-Council, posed the following question:

Has Anguilla seceded? Since, as stated above, it has been agreed by Her Majesty's Government that the Associated State of St. Kitts/Nevis/Anguilla will formally remain in being, one can only assume that independence will be granted in due course to the entire state and not to a fraction thereof.³⁰

This question has since been answered in the affirmative and the writer happened to be present to hear the formal announcement that secession had become an accomplished fact. By a curious quirk of fortune he was, on October 6, 1981, paying his first return visit to Anguilla since about February 1967, and this private visit coincided with a meeting of the Anguilla Legislative Assembly in which Her Majesty's Commissioner (soon to be styled 'Governor') was reading the Speech from the Throne which thereafter was being debated on the same day. One item in the Commissioner's speech dealt with the island's Constitution, in respect of which the Commissioner had this say:

History now records that on 19th December, 1980, the constitutional ties with the Associated State of St. Kitts/Nevis/Anguilla were finally and form-

29. See under note 27, *supra*.

30. Phillips, p. 106.

ally cut: happily in a spirit of good will and co-operation on all sides. On that day, any remaining doubts that Anguilla was not a separate entity were finally dispelled. Equally significant, was the fact that, in a history going back to 1650, Anguilla for the first time has the right to follow its own constitution, uncomplicated by any legal or other ties. The importance and significance of this situation cannot be sufficiently emphasised, for it means that Anguillans now have the opportunity to control their own political destiny. But on the other hand it also means that Anguillans will have to accept far greater responsibilities and obligations.

The Commissioner in his speech made the following proposal:

It is the Government's hope that the necessary Order-in-Council will then be made so that the new Constitution will become effective in Anguilla as soon as possible and not later than the first anniversary of Separation Day, 19th December, 1981.³¹

In August 1981 a government delegation had visited London to ascertain what constitutional advance, if locally agreed to, would be acceptable to Her Majesty's Government. As a result, a White Paper making various proposals was distributed and was available to all members so that the matter could be discussed at the meeting of October 6, 1981. The proposals, while not going as far as a request for associated statehood or internal self-government, provided for a further degree of local responsibility in the running of the island's affairs by the Government in power. (It had been made clear in London by H.M.G. that if any territory in future wished to have associated statehood, it would not be granted, but that H.M.G. would be prepared to consider full independence for such an aspirant.)

The Commissioner ended his discourse with the following comforting words:

Honourable Chief Minister, Hon. Ministers of Government and other members of the Assembly I pray that God will guide you in all your deliberations and that your endeavours will lead to social stability, social justice and national happiness.

Secession de jure

On 1st April 1982, therefore, an Order³² amending the main 1976 Anguilla Order introduced the following changes thereto:

- a) The Commissioner was replaced by a 'Governor'.³³
- b) The post of Chief Secretary was abolished.
- c) The jurisdiction of the West Indies Associated States Supreme Court was extended to Anguilla.

31. In the event, the new Anguilla Constitution Order 1982 (S.I. 1982 No. 334)—hereafter "the 1982 Order"—was not made at the Court at Buckingham Palace until 10th March 1982, and it came into operation on 1st April 1982, when all the amendments to the 1976 Order which have been mentioned became operative.

32. The Anguilla Constitution Order 1982 (S.I. 1982 No. 334).

33. *Ibid.*, sec. 19.

- d) Provision was made for the dissolution of the Assembly when a no-confidence motion was passed in the Legislature against the Government.³⁴
- e) Provision was made for an Acting Governor (there having been no such section in the previous Order).³⁵
- f) The Permanent Secretary, Finance, would replace the Financial Secretary as an *ex-officio* member of the Executive Council.³⁶
- g) The subject of Finance would henceforth be the responsibility of a minister.
- h) The Governor would continue to be responsible for defence, external affairs, internal security (including the police) and the appointment, dismissal and retirement of public servants, but will be required to consult with the Chief Minister on matters relating to internal security (including the police) and matters relating to the public service.³⁷
- i) The Governor would be empowered to appoint a member of the Executive Council to deal with matters relating to his responsibilities in the Legislative Assembly, which was being restyled "House of Assembly".³⁸

Accordingly, the island, which in 1967 had defied everyone by rebellion and by seceding and promulgating a unilateral declaration of independence, had so fully profited from the fruits of that rebellion that it was now happily once more integrated with the rest of the Caribbean, including St. Kitts itself. It has since been accepted as a separate member of the Caribbean Development Bank; it is interested in and has supported the idea of the formation of the Organisation of Eastern Caribbean States, although it has not yet formally been accepted as a member; it is already a member of the Caribbean Tourism Association and the Caribbean Tourism Research Centre; it also participates in the arrangements for a Supreme Court in common with the members of the Organisation of Eastern Caribbean States; and it now wishes to become a full member of the Caribbean Community in its own right.

Now after all its trials and tribulations, Anguilla is proud to be a Colony; to have a Governor of its own as well as its own House of Assembly and Executive Council. It may sound odd in this day and age that inhabitants of a country should regard this separate colonial status as in every way akin to independence but that is the position in Anguilla. For relief from the shackles of St. Kitts has always been, for over a century, their highest priority.

34. *Ibid.*, sec. 25.

35. *Ibid.*, sec. 20.

36. *Ibid.*, sec. 23.

37. *Ibid.*, sec. 23.

38. Proviso to sec. 28(4).

B. ST. KITTS/NEVIS: Independence in Federation

In examining the federal association into which St. Christopher (St. Kitts) and Nevis entered upon attaining independence, the first question which one is tempted to ask is: Why was this arrangement necessary? The answer is not difficult to find. If there were no federation on terms acceptable to Nevis, the two islands would have gone their separate ways—thus producing further political fragmentation in the Caribbean. The matter thus resolves itself into this: Which is the greater evil, further subdivision or a marriage of convenience—which this federation undoubtedly is.

In *Freedom in the Caribbean* the writer touched briefly on the long history of grievance nurtured by Nevis against St. Kitts and Her Majesty's Government ever since the British Government by imperial legislation brought Nevis into the unitary state of St. Kitts/Nevis/Anguilla in 1882. Nevis had hitherto been a separate jurisdiction with its own legislature and Lieutenant-Governor. There was considerable justification for the sense of grievance which was manifested by the people of that island. It is therefore right and proper at this stage to put the St. Kitts/Nevis relationship in historical perspective. But in order to achieve this objective, the writer must perforce take his readers back to a time in the middle of the nineteenth century when "the Governor-in-Chief in and over the Leeward Islands" (hereafter referred to simply as "the Governor") had his headquarters in Antigua after its removal toward the end of the previous century from Nevis, where it was known as "Queen's House". It was in these latter surroundings that Admiral Lord Nelson and the other nabobs of the Royal Navy bespotted themselves in Nevis—the Admiral even finding his bride there in the person of Mrs. Nesbitt.³⁹

Historical Background

In 1854 the Leeward Islands group was a British West Indian colony which comprised six separate administrative and political sub-units, viz., Antigua, St. Christopher (St. Kitts),⁴⁰ Nevis, Dominica, Montserrat and the British Virgin Islands: Antigua being at that time the seat of government of this group of islands. In the immediately preceding section of this chapter, we have already described the circumstances in which Anguilla became annexed to St. Kitts; and in the following chapter we shall give an account of the manner in which Barbuda became linked to Antigua. With respect to the islands of St. Kitts and Nevis, with which we shall deal here, it is worth noting that, physically, they are separated by a body of water, only two miles in width, called "The Narrows".

The administrative structure of the sub-units mentioned above followed

39. See note 2, *supra*.

40. The names 'St. Christopher' and 'St. Kitts' will be used interchangeably in this section, as indeed is permitted by the Constitution of St. Christopher and Nevis (see sec. 1(1) of Schedule 1 to St. Christopher and Nevis Constitution Order 1983 (U.K. Statutory Instrument 1983, No. 881)).

a uniform pattern. The Governor of the Leeward Islands resided in Antigua, from which base he exercised a supervisory authority over all the islands referred to above. The governments of St. Kitts and Dominica were each administered by a resident Lieutenant-Governor. On the other hand, the governments of Nevis, Montserrat and the British Virgin Islands were each administered by a President: hence the expression "the Presidency of Nevis", which was simply an administrative sub-unit of the Colony of the Leeward Islands in which the most senior bureaucrat was officially styled "the President". The Governor was the only political and administrative link between the governments of the six territories, since each individual island possessed its own bicameral legislature, Executive Committee and civil service.

For the Leeward Islands, the years from 1854 to 1871 were marked by economic stagnation and decline. However, they represented a significant period of transition in terms of the political and constitutional development of the islands. Anthony Phillips, in his well-researched thesis to which reference has already been made,⁴¹ has described in great detail the various measures which were initiated during that period, leading ultimately to the Leeward Islands Federation of 1871.

Although the idea which resulted in the Federation of the Leeward Islands in 1871 was mooted in 1868, federation *per se* was by no means a novel experience for the inhabitants of these islands, of which St. Kitts was the first to be settled by English colonists. Indeed, it was from St. Kitts that a number of the other islands was likewise settled, and we must bear in mind that as early as 1660 the Leeward Islands were administered by a common Governor, then stationed on the island of Barbados.

Original Union of St. Kitts and Nevis

As we have seen above, in 1854 the Presidency of Nevis was a separate and distinct political and administrative unit with its own institutions. However, both St. Kitts and Nevis became quasi-Crown Colonies and a commission was issued to one Captain McKenzie by the British Colonial Office, appointing him to be Lieutenant-Governor of both islands. McKenzie arrived in St. Kitts on March 29, 1867, and lost little time in attempting to fulfil what was clearly the real purpose of his appointment. In his very first speech to the Nevis Legislature he raised the question of the proposed amalgamation of Nevis and St. Kitts: thereafter promptly reporting to the Colonial Office that the proposal was well received by the Nevis Legislature which promised to give it serious consideration.⁴² However, events were to show that the Nevisians were diametrically opposed to the merger.

By April 1868, less than a year after the proposals were first put forward, reports reaching the Secretary of State for the Colonies in London revealed that a spate of petitions had been presented in which the Nevisians "prayed for" the restoration of their former constitution and the appoint-

41. See note 2, *supra*.

42. A Phillips, p. 289.

ment of a local officer to administer the government of the former Presidency, and protested vigorously against the intended merger: the main ground of opposition at the time being that St. Kitts had an unusually heavy public debt and that amalgamation would on that account enure more to the advantage of St. Kitts than to the benefit of Nevis.

Oddly enough, the amalgamation was as unpopular in St. Kitts as it was in Nevis, for it was discovered that a majority of the members of the St. Kitts Legislature were likely to vote against it. It was at the same time common knowledge that no one in Nevis was in favour of the proposed union and that if the Colonial Office pressed the measure upon the Nevisians serious disturbances were likely to ensue. Accordingly, on June 18, 1868, in an address to the Nevis Assembly the Lieutenant-Governor announced that the amalgamation proposals were being suspended pending further instructions from the Secretary of State.⁴³

When four months later officials in London were advised that disturbances had in fact broken out in Nevis, they treated the reactions of the Nevisians with the usual calm, concluding that the disturbances were 'disgraceful' and attributable to "a series of errors and indiscretions on the part of the Lieutenant-Governor of a very plain and palpable character".⁴⁴

The fact is that in the meantime an attack was being levelled at Nevis from another quarter. By 1869 the proposal for a federation of the Leeward Islands had gained almost total acceptance—receiving support in all the island legislatures except that of Nevis, which turned out to be the last Assembly to approve—in circumstances that, in our day and age, would be considered quite unbelievable.

On the morning of December 1, 1869, the day fixed for the Federation Debate in the Nevis Assembly, the Lieutenant-Governor summoned the nominated members of that body to his official residence to impress upon them that it was imperative that the measure should be carried out on that day *at all costs*. It was felt that an affirmative vote was necessary not only for the federation proposal itself but also as an assertion of law and order in the face of threatened anarchy. The Lieutenant-Governor apprehended that there could be further disturbances and, since he was of the view that the local police could not be relied on if the disturbances did take place, he arranged to land a small party of marines from a British frigate then conveniently lying off Nevis, "ostensibly, simply as a guard of honour", with a larger force waiting in readiness to be brought ashore if the situation warranted it.⁴⁵

Half an hour after the time appointed for the commencement of the Federation Debate, the meeting of the House of Assembly was convened and proceeded at once to deal with the business of the day in the absence of the elected members of the Assembly, who had all decided to boycott the meeting. However, although at least one elected member appears to have been needed to constitute the required quorum, so firm was the resolve of

43. *Ibid.*, p. 304.

44. *Ibid.*, p. 305.

45. *Ibid.*, pp. 359-60.

the Lieutenant-Governor to secure the approval of the measure by the Assembly at all costs that he arranged for the instantaneous appointment (and swearing in) of an additional nominated member. In his address to the House, the Lieutenant-Governor outlined the benefits that would accrue to Nevis by the replacing of "the narrow prejudices of a small locality" by "higher and nobler feelings of pride in a nationality which [Nevisians] had helped to create and in a common country which they will help to rule". This statement of course had no basis whatever in reality. Nevertheless, at the end of the day, the necessary resolutions were duly recorded as having been passed unanimously and it was in this extraordinary and high-handed manner that in 1869 the people of Nevis were forced to signify their 'support' for the proposed Leeward Islands Federation.

This was not the end of the woes of the Nevisians as far as federation was concerned. The five elected members of the legislature petitioned the Secretary of State, pointing out that they had boycotted the meeting of December 1, 1869, to emphasise their opposition to the measure; that the votes of the nominated members were insufficient to constitute a quorum; that even the swearing-in of an additional nominated member could not cure that defect and that accordingly the passage of the resolution was "unconstitutional and arbitrary".⁴⁶

The response of the Secretary of State was predictable in the circumstances. In rejecting the petition, he pointed out that if the construction urged by the petitioners was accepted it would mean that it would never be possible to form a House of Assembly since, in the case of the first meeting of that body after a general election, none of the members could have taken the qualification oath and there would therefore be no quorum.⁴⁷

What emerges from this response is that the officials at the Colonial Office had eventually—by a subterfuge—secured their main objective, namely, amalgamating the small islands of the Leeward Islands into a single political and administrative unit. In so doing, they were not prepared to concede that the Lieutenant-Governor acted unconstitutionally or arbitrarily. They were prepared to resort to any argument, no matter how irrelevant, to justify his action and sustain their position. Thus the Nevisians may have won the battle in opposing a union with St. Kitts, but they lost the war in that they were unable to avoid being incorporated into a federation in which St. Kitts was also a participant.

Undaunted by the setback in the Nevis House of Assembly, the people of Nevis continued to make further representations against the federal measure and the manner in which the resolution was passed. They drew up a memorial requesting that general elections be held on the specific issue of federation. Their efforts were all to no avail, since with the passage of the resolution by the Nevis Assembly it had been made to appear that all the constituent legislatures had signified their assent to the federal union. The imperial Parliament then proceeded to ratify the decisions of the island legislatures and to enact the Leeward Islands Act of 1871, creating a federal

46. *Ibid.*, p. 363.

47. *Ibid.*

scheme which, far from being conceived by the people and receiving their spontaneous support, had been vigorously opposed by the people of Nevis. Like all similarly contrived unions, this federation was doomed to failure from its inception.

The Federal Colony of the Leeward Islands which, as we have seen, was established by the Leeward Islands Act, 1871, of the United Kingdom Parliament,⁴⁸ consisted of the six territories already mentioned, each with its own legislature. In 1882, however, the Legislature of the Colony of the Leeward Islands, having been authorised by Ordinances passed by the respective legislatures of St. Kitts and Nevis, enacted the St. Christopher and Nevis Act making provision for the union of the two presidencies: Section 4 of that Act providing as follows:

The Presidencies of St. Christopher and Nevis, consisting of the islands of St. Christopher, Nevis and Anguilla,⁴⁹ with their respective dependencies, shall form one Presidency, to be called the Presidency of St. Christopher and Nevis.

It was by this rather involved and convoluted process that the once separate Presidency of Nevis came to be joined in an unwilling union with the Presidency of St. Kitts. Both Nevis and Anguilla in this way remained as sister colonies of St. Kitts—very poor relations—from 1882 until Anguilla was formally separated in 1980 and Nevis joined St. Kitts in a federal union at the time of independence in 1983.

The Nevisians never ceased to protest against the union with St. Kitts. In 1921, for example, the then Administrator of the Presidency wrote a despatch to the Secretary of State for the Colonies in London urging that H.M.G. should sanction the secession of Nevis from St. Kitts. He urged in support his own convenience and the fact that the Nevisians are an independent people who should never have been tied to St. Kitts. His monumental despatch received a very cold response from the then Secretary of State—Winston S. Churchill (no less)—who replied, simply urging that all that was needed for welding the two colonies together was a steamer which could be purchased from the Crown Agents for £500. Churchill's response further illustrates the insensitive manner in which successive Secretaries of State for the Colonies have treated what for the Nevisians was a very real and serious grievance, viz., having to remain unwillingly bound in a union with St. Kitts.

To return to the federal issue. It is generally acknowledged that the federation failed on several counts. It failed to live up to the promise of greatly improved administration; it failed to produce economies in the administration of the federating islands as one composite unit; and it failed in that it did not produce any significantly greater output in terms of social development.

When one recalls that the federal scheme was avidly promoted by the British Government, acquiesced in by most of the then governments of the

48. See the Leeward Islands Act, 1882 (No. 2) contained in the Laws of the Leeward Islands 1927 Revision as Chapter 10.

49. Anguilla had by then also been linked unwillingly to St. Kitts; see *supra* at pp. 115-18.

Leeward Islands but consistently opposed by the people of Nevis, one cannot be surprised that the union in the end proved unsuccessful. Even Dominica—one of the acquiescing entrants—was never really reconciled to remaining in this union and, following the recommendations of two Royal Commissions, was eventually separated from the Leeward Islands to become attached to the Windward Islands in 1950. The Federation itself was brought to an end by the British Parliament in 1956 at the request of its constituent units.

On the dissolution of the Federation of the Leeward Islands almost all of the federating units reverted to their former separate colonial status—all, that is, except Nevis, which continued in its unhappy union as part of the colony of St. Christopher, Nevis and Anguilla. Thus the Leeward Islands Letters Patent 1956 which provided for the administration of that group of islands contains the following definition:

'Leeward Islands' means the Colony of Antigua, *the Colony of Saint Christopher, Nevis and Anguilla*, the Colony of Montserrat and the Colony of the Virgin Islands. (emphasis supplied)

In an attempt to placate the Nevisians, various token concessions were made. One of these concessions took the form of a provision in the Instructions passed under the Royal Sign Manual and Signet to the Governor of the Leeward Islands dated 20th June 1956, viz., that there should always be a member of the Executive Council selected from among the elected representatives of Nevis. At that time the members of the Executive Council of St. Christopher/Nevis/Anguilla comprised the following:

- The Governor;
- The Administrator;
- Two Official Members;
- One Nominated Member; and
- Four elected Members who shall be elected by the Nominated and Elected Members of the Legislative Council of the Colony from among the Elected Members of that Council;

Provided that whenever the number of Elected Members of the Executive Council of St. Christopher/Nevis/Anguilla does not include a person who has been elected to the Legislative Council of the Colony to represent an electoral district in the Island of Nevis, then the number of the Elected Members of the Executive Council shall be increased by the election thereto by the Nominated and Elected Members of the Legislative Council of the Colony of an additional member from among the Elected Members representing the Island of Nevis in the Legislative Council.

And so we come to the next federation into which Nevis was to find itself submerged—The West Indies Federation.

The people of Nevis did not take any exception to the constitutional change brought about by the Federation of the West Indies (which was inaugurated in 1958) until Sunday, 2nd April 1961, when about 4,000 persons assembled at Grove Park, Charlestown, Nevis, to take part in a demonstration which had come together to move a resolution by the people of

Nevis urging that they be permitted to secede from the unitary State of St. Kitts/Nevis/Anguilla.

The Resolution ended with these words:

Be it therefore Resolved that this body of persons here assembled, by their resolution give to the Legislative Council Representatives for Nevis a full mandate to move at the next meeting of the Legislative Council of the Colony of St. Kitts/Nevis/Anguilla that the island of Nevis secede from the Colony of St. Kitts/Nevis/Anguilla, establishing the island of Nevis as a separate unit within the framework of the West Indies Federation.

The further Resolution—which was to be moved at the next meeting of the Legislative Council—was also approved and was in these terms:

WHEREAS the people of the Island of Nevis in the Colony of Saint Christopher, Nevis and Anguilla having assembled at Grove Park in the town of Charlestown, in the island of Nevis, on Sunday the 2nd day of April, 1961, at 4.00 p.m. DID RISE IN PROTEST against the wilful and persistent indifference and neglect concerning the social, economic and political affairs of Nevis

AND WHEREAS it is the feeling of the people of Nevis that the existing constitution of the Colony denies them the rights of free people to take active part in the government of their island,

AND WHEREAS the said people of Nevis by free peaceful and democratic means demonstrated publicly on the day and date above-mentioned and passed the resolution, *attached hereto*, empowering their Legislative Council Representatives to move a resolution in the Legislative Council of the Colony, that the island of Nevis secede from the Colony of Saint Christopher, Nevis and Anguilla,

BE IT THEREFORE RESOLVED that this Honourable House approve of the secession of the Island of Nevis from the Colony of Saint Christopher, Nevis and Anguilla, and that the necessary constitutional exercises be immediately implemented to effect such a secession,

AND BE IT FURTHER RESOLVED that immediate steps be taken to inform the Federal Government of the wishes of the people of Nevis to have the said island considered and established as a separate unit within the framework of the West Indies Federation

Subsequently, the Nevis representatives tried to secure representation at the London Conference in May/June 1961 when the Federal Constitution and territorial constitutions were being reviewed, but this representation was denied them.

Thus the secession movement in the West Indies, though it began *de facto* with Jamaica in 1962, had for many years previously been strongly advocated by Nevis and Anguilla as a way out of their difficulties with St. Kitts. What is more, Nevis has never at any time abandoned her latent desire to secede.

On March 28, 1969, the then Governor of St. Kitts/Nevis/Anguilla⁵⁰ received a communication from one of the Nevis representatives in the St. Kitts/Nevis/Anguilla House of Assembly in which he enclosed a petition with

50. The writer was the Governor of the State at the instant time.

a request that it be forwarded to the Foreign Secretary of Great Britain. It was dated 19th March 1969, and was signed by the Chairman of the Nevis Local Council. The petition condemned the use of threat or force in Anguilla, and called upon Britain to negotiate peacefully. It then went on to demand greater autonomy for the Island of Nevis "so as to avoid the possibility of crisis similar to that which occurred in Anguilla". Finally, the petitioners called "for a Constitutional Conference with adequate representation in order to meet our demands". The communication was duly forwarded to the Premier and to the British Government Representative.

When one considers the firm requests made in this petition in 1969, and when one reviews the constitutional history of Nevis as has been set out above, it is difficult not to feel some sympathy with the people of the island. One can also appreciate why the authorities in 1983 felt impelled to grant to Nevis at the time of independence the degree of autonomy accorded it. As far back as the general elections of 1975, the Nevis Reformation Party (N.R.P.) had in its Manifesto stated as follows:

The N.R.P will strive at all costs to gain secession for Nevis from St. Kitts—a privilege enjoyed by the Island of Nevis prior to 1882.

In 1978 this firm resolve of the Nevisians to secede once again received expression. The people of Nevis on this occasion asked that Britain should confer on them the status of an Associated State. In a letter dated 5th May 1978, from the Acting Premier of the State (C.A. Paul Southwell) addressed to Simeon Daniel, then Chairman of the Nevis Local Council, Southwell wrote, *inter alia*, as follows:

. . . I have the honour to put forward the attached proposals for your consideration in the hope that they will successfully bridge the gap between our two parties and our two groups and bring about the unity of purpose which is not only vital to the survival of this country, but honestly expected by all right-thinking people in the State.

Southwell's proposals were for granting Nevis very little more power than it already had insofar as local government was concerned; and his letter seemed to imply that Nevis was entitled to nothing more than that.

Daniel's reply was firm and resolute in the direction of secession. Here it is:

I have read your proposals and note with regret that although in your letter you have expressed a desire to bridge the gap between our groups and to bring about unity of purpose, yet by your proposals you have openly insulted the people of Nevis.

Also in the light of your Government's move for political independence for the State, my proposals and those of the other elected representatives for the island, the Nevis Reformation Party, are as follows:

- a) That you recognise and take cognizance of the political aspiration and ambitions of the people of Nevis.
- b) That you recognise and support the right of self-determination for the people of Nevis regardless of the size of the country.

- c) That you consider the justice of the case of the people of Nevis for the right to self-determination and not seek to change their nationality against their will.
- d) That you act in a statesmanlike manner and request Her Majesty's British Government to act under the provision of the West Indies Act 1967, Section 9, subsection 1(b), so as to divide the State of Saint Christopher, Nevis and Anguilla whereby Nevis shall become the Associated State of Nevis.

There can be no doubt therefore that the St. Kitts Labour Party under the leadership of Bradshaw (with Southwell as Deputy Premier) was up to 1978 steering for a head-on collision with Nevis. Bradshaw, however, died in 1978 and a year later, unfortunately, so also did Southwell.

Notwithstanding the consistency displayed by Nevis in relation to secession, in December 1979 the then Government conferred with H.M.G. and the leadership of the N.R.P., at which conference it was agreed as follows:

- a) St. Kitts/Nevis should proceed to independence in June 1980 as a *unitary state*; and
- b) a referendum would be held in Nevis 18 months after independence to allow the Nevisians to decide whether they wanted the arrangement to continue or whether they would prefer separation from St. Kitts.

Needless to say, even after this arrangement had been reached, the N.R.P. remained adamant that they wanted secession.

The general elections which were held in 1980 produced the following results:

- The St. Kitts Labour Party — 4 seats (all in St. Kitts proper)
- People's Action Movement (P.A.M.) — 3 seats in St. Kitts
- Nevis Reformation Party (N.R.P.) — 2 seats in Nevis

On the basis of the outcome, a coalition Government was formed by the P.A.M. and the N.R.P., led by Dr. Kennedy Simmonds of the P.A.M., who became Premier of the country.

As mentioned above, independence had been scheduled for June 1980, but the change of government in that year brought about a change in the time-table since the new government wanted time to study the issue and to formulate its own proposals. It was in these circumstances that the coalition in 1982 produced a White Paper setting out proposals for a substantial devolution of power to Nevis upon independence. The proposals set out in the White Paper were to a large extent incorporated in the Independence Constitution which we shall now discuss.

Federation of St. Kitts and Nevis

With regard to the Independence Constitution of Saint Christopher and Nevis, the first thing which should be observed is that it established "a

sovereign federal State".⁵¹ However, whereas in a normal federation the constituent units would each have had a Governor while there would be a Governor-General of the whole Federation,⁵² in this case the Federation has a Governor-General while Nevis has a *Deputy Governor-General* appointed by the Governor-General who has the power to limit the functions of his deputy and to prescribe the length of his term of office.⁵³ In making this appointment the Governor-General is required to act on the advice of the Premier of Nevis.⁵⁴ However, in making an appointment of a person to deputise for him whenever he has occasion to be absent from Saint Christopher and Nevis for a period of short duration or is indisposed for a short period, the Governor-General acts on the advice of the Prime Minister of the Federation,⁵⁵ although it is within the constitutional competence of the Governor-General, acting in his own discretion, to give to his deputy instructions in respect of the functions he is to perform and the deputy must conform.⁵⁶

The Constitution established a National Assembly of the Federation which is unicameral but consists of 'Representatives' and Senators, as in the case of St. Vincent and Dominica. One-third of the total number of senators (excluding any senator who holds the office of Attorney General) is appointed by the Governor-General acting on the advice of the Leader of the Opposition while the remainder are appointed on the Prime Minister's advice.⁵⁷

There is to be an Electoral Commission for the Federation of which one member will be appointed by the Governor-General in his own deliberate judgment, one on the advice of the Prime Minister and the third on the advice of the Leader of the Opposition: the function of this Commission being to supervise the Supervisor of Elections in the performance of his duties.⁵⁸

THE NEVIS ADMINISTRATION

At this point, a word should be said about the Nevis regime and about its relations with St. Kitts. The law-making body of Nevis is to be styled "The Nevis Island Legislature" and shall consist of Her Majesty and an Assembly styled the Nevis Island Assembly.⁵⁹ The Assembly comprises both elected and nominated members.⁶⁰

The Nevis Island Administration consists of:

- a) a Premier; and
- b) two other members or not less than two nor more than such greater

51. See Schedule to the St. Christopher and Nevis Constitution Order 1983 (S.I. 1983 No. 881), sec. 1, hereafter referred to simply as "the St. Kitts Constitution 1983".

52. *Ibid.*, sec. 21.

56. *Ibid.*, sec. 23(3).

53. *Ibid.*, sec. 23(2).

57. *Ibid.*, sec. 30.

54. *Ibid.*, sec. 23(6)(b).

58. *Ibid.*, sec. 33.

55. *Ibid.*, sec. 23(6)(a).

59. See the Saint Christopher & Nevis Constitution Order 1983 (S.I. 1983 No. 881), sec. 100.

60. *Ibid.*, sec. 101.

number of members as the Nevis Island Legislature may prescribe, who shall be appointed by the Governor-General. These "members of the Administration" (which is a euphemism for 'Ministers') are of course appointed by the Governor-General acting on the advice of the Premier of Nevis.

The functions of the Administration are to advise the Governor-General in the government of the island of Nevis.⁶¹

The Nevis Island Legislature may make 'Ordinances' (not 'Acts' as in the case of the Federal Parliament) for the peace, order and good government of Nevis⁶² with respect to the following specified matters:⁶³

- a) airports and seaports;
- b) education;
- c) extraction and processing of minerals;
- d) fisheries;
- e) health and welfare;
- f) labour;
- g) land and buildings vested in the Crown;
- h) licensing of imports into and exports out of St. Christopher and Nevis.

But it is to be noted that the island Legislature may make laws containing incidental and supplementary provisions relating to matters other than the specified subjects set out above, "but if there is any inconsistency between those provisions and the provisions of any law enacted by Parliament, the provisions of the law enacted by Parliament shall prevail".⁶⁴

The Premier of Nevis shall not advise the Governor-General to dissolve Parliament unless he has consulted the Prime Minister.⁶⁵

The staff of the Administration shall consist of such number of public officers as may be constituted in that behalf under Section 63 *after consultation with the Prime Minister*.

There is an interesting provision in the Constitution relating to revenue allocation, viz., the proportion to be paid to the Federal Government and to the Nevis Government will be shared by reference to the population of Nevis on the one hand and the population of St. Kitts and Nevis as a whole on the other hand, to be ascertained in accordance with the latest census figures; provided that the Administration's share shall be subject to the following deductions:

- a) a contribution to the cost of common services provided for St. Kitts and Nevis by Government; and
- b) a contribution to the cost of meeting the debt charges for which the Government is responsible—and such debt charges include interest, sinking fund charges, the repayment of amortisation of debt and all expenditure in connection with the raising of loans on the security

61. *Ibid.*, sec. 102.
62. *Ibid.*, sec. 103(1).
63. *Ibid.*, sec. 106.

64. *Ibid.*, sec. 103(2).
65. *Ibid.*, sec. 104(3).

of the Consolidated Fund and the service and redemption of the debt created thereby.

It is the Governor-General who would make rules to give effect to the provisions prescribing what services are to be regarded as common services and what contributions are to be made by the Nevis Administration; but in so doing he must act on the advice of the Prime Minister which advice will only be given after consultation with the Premier.⁶⁶

The High Court has exclusive jurisdiction to adjudicate as between Government and Administration "in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends".⁶⁷

All these clauses presuppose a degree of amity and will to collaborate as between the Government of the Federation and the Nevis Administration; and it must be clear to all that the absence of such amity will most surely mean an end to the continued existence of the Government as at present constituted. Perhaps it was to provide for a situation where the Labour Party (the Opposition Party in 1983) comes to power by winning six of the eight seats in St. Kitts, while P.A.M. wins the remaining two seats in St. Kitts and the Nevis Reformation Party the three Nevis seats (as they will always do), that the framers of the Constitution made the following provision in the Instrument:

The Nevis Island Legislature may provide that the island of Nevis shall cease to be federated with the island of St. Christopher and accordingly that this Constitution shall no longer have effect in the island of Nevis.⁶⁸

This provision is followed by the regime by which such secession may be effectuated.⁶⁹

In order to give effect to such a de-federation the necessary Bill will require a two-thirds majority of all the elected members of the National Assembly and it must not be presented to the Governor-General for assent unless the following conditions are fulfilled:

- a) there must be an interval of at least ninety days between the introduction of the Bill into the Assembly and the second reading thereof;
- b) after the Assembly shall have passed the Bill, it must be approved on a referendum *in Nevis* by at least two-thirds of all the votes validly cast; and
- c) full and detailed proposals for the future constitution of Nevis (whether as a separate state or as a state in association with some other country) must have been laid before the National Assembly for at least six months before the holding of the referendum while those entitled to vote on the referendum must have access to those proposals at least ninety days before the holding of the referendum.

66. *Ibid.*, sec. 110.
67. *Ibid.*, sec. 112.

68. *Ibid.*, sec. 113(1).
69. *Ibid.*, sec. 113(2)-(8).

The Nevis Legislature will be competent to make arrangements for independent and impartial persons nominated by an international body to observe the conduct of such a referendum.⁷⁰

Another unique feature of this Constitution is that provision is made therein for the new 'rump' St. Kitts Constitution in the event of the secession of Nevis.⁷¹ Thus, whereas Nevis will have to concern itself with drafting its own constitution, a ready-made one is forged for St. Kitts.

There is one other provision in this unique Constitution to which we must advert. The Constitution is at pains to emphasise that the power and authority of the Governor-General shall not be abridged, altered or in any way be affected by the appointment of a deputy under the relevant section and that (as mentioned above) such deputy "shall conform to and observe all instructions that the Governor-General, acting in his own deliberate judgment, may from time to time address to him".⁷²

St. Kitts/Nevis has broken new ground in creating a federal structure that is *sui generis*: a federation not between St. Kitts and Nevis but between Nevis on the one hand and St. Kitts/Nevis on the other.

There can be no doubt that the framers of the Independence Constitution displayed considerable ingenuity; and it is not without significance that at snap general elections held on 21st June 1984—after the above had been drafted—the governing party of Dr. Kennedy Simmonds (political Leader of the People's Action Movement) won six of the eight seats for St. Kitts in the House of Assembly while the Nevis Reformation Party won all the three Nevis seats. Thus the coalition formed by these two parties, which took the country into independence, will until the next general elections due in 1989 control nine seats in an eleven-seat National Assembly.

What this means in practice is that until 1989 the coalition will be able to muster the necessary two-thirds majority in the event that it considers it necessary to make an amendment to the Constitution or to the Supreme Court Order. But it may not be so easy to fulfil the other condition prescribed for amending Section 38 of the Constitution as well as Schedule 1 thereof, viz., that after a Bill has been passed it must be approved on a referendum by not less than two-thirds of the votes validly cast on the referendum in St. Kitts as well as two-thirds of the votes in Nevis.

Concluding Words

There are those who considered after the agreements reached at the London Independence Conference of 1980 that if the St. Kitts Labour Party won the first general elections after independence, the party would initiate a dissolution of the federation. As mentioned in the preceding section, that party was severely defeated in those first general elections held in June 1984 and it may well be that by the time the next general elections take place in

1989 the leaders of that party may have become reconciled to maintaining the *status quo*, if they were then to win the elections.

One can therefore only hope that this is not a case for the breakup of one more federation in the Caribbean with the fragmentation that will result therefrom. In this connection let us not lose sight of the fact that once the British Government permitted Jamaica in 1962 to secede from the Federation of the West Indies, then Trinidad & Tobago felt impelled to do the same and to become an independent country. When that happened, Barbados and Guyana followed suit; to be joined in 1973 by The Bahamas, after which the members of the procession included Grenada, Dominica, St. Lucia, St. Vincent, Antigua, Belize and St. Kitts. Fragmentation has become the order of the day in an area that once endeavoured to unite and it is clearly time that the line should be drawn, even though at this late hour.

We now address the problems of post-independence reform in relation to the constitutions of ANTIGUA, BARBADOS, JAMAICA and BELIZE.

70. *Ibid.*

71. *Ibid.*, sec. 115 and Schedule 3.

72. *Ibid.*, sec. 23(3).