A REPORT BY JUSTICE

Matrimonial Cases and Magistrates' Courts

CHAIRMAN OF COMMITTEE
JOHN LATEY, Q.C.

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PREFACE

1. This Committee was set up as a result of a Resolution passed at the Annual General Meeting of JUSTICE in September, 1960. We were given the following Terms of Reference:—

> "To consider the position concerning the hearing of matrimonial disputes in magistrates' courts in the light of the Government's promise to make legal aid available in such disputes, and in particular to consider the suitability of the present constitution of such courts, means whereby inordinate delays between hearings can be avoided and the suitability of the present system of appeals in relation thereto."

2. In order to obtain a factual background against which to consider our Terms of Reference, we sought and received assistance from the clerks of 23 magistrates' courts situate in urban and rural areas in England and Wales. We sent them a questionnaire and the analysis of the replies received has provided us with a valuable basis upon which to build practical recommendations. In the closing stages of our work we again approached the same courts in order to be able accurately to gauge the effect of the introduction of legal aid so far as matrimonial causes in magistrates' courts are concerned. The questionnaires to the courts were wide and searching and we take the first opportunity to express our gratitude for the very great assistance we have derived from the information, statistical and otherwise, which illumined their answers.

3. We have worked on the basis of the courts' analyses already referred to, and numerous papers and memoranda prepared for us by Committee Members and outside persons and bodies. We would like to record our appreciation of the help given to us by the National Marriage Guidance Council, the National Association of Probation Officers, private members of JUSTICE, and others.

4. We would also like to thank Mr. R. L. Hazell, the President of the Justices' Clerks' Society, who accepted our invitation to come to discuss with us the problems of staffing, which have emerged as of great importance. The information he was able to give us emphasised the urgency of finding an immediate and practical solution to the difficulties of recruiting suitable candidates for the administrative and professional staffs of magistrates' courts.

5. As well as *ad hoc* sub-committee meetings on the several aspects arising from our Terms of Reference, we met in full Committee on 21 occasions.

6. The Committee is greatly indebted to its Secretary, Mr. Harold Wilson, and would like to express its warm thanks to him for the volume of detailed research he has undertaken and for his efficient handling of all the Committee's work.

Magistrates' Courts and Matrimonial Cases

INTRODUCTION

The Importance of the Jurisdiction

7. The history of the jurisdiction of the magistrates' courts in matrimonial cases since its creation in 1878 is one of progressive extension and increasing importance. The grounds on which they can make orders for separation and maintenance in favour of wives have been widened. Their powers to make orders for separation in favour of husbands have been extended and they are now empowered in certain circumstances to make maintenance orders in favour of husbands. The limits of their financial jurisdiction for maintenance orders for wives and children have been progressively raised since 1886. Their findings are now evidence in subsequent High Court proceedings for divorce or judicial separation. (See section 7 (2) of the Matrimonial Causes Act, 1950, re-enacting section 6 (2) of the Matrimonial Causes Act, 1937.)

8. With the exception of graver criminal causes and of matrimonial causes in the High Court and children's cases, this is in our view one of the most important jurisdictions in its impact on the lives of the parties and their children.

9. The financial repercussions of matrimonial orders made by magistrates are often of long-standing consequence, not only to the wives or husbands who may be recipients under them, but also to the spouses against whom they are made, many of whom, especially before the introduction of legal aid, have not understood or appreciated properly the significance of the proceedings to which they are made party. The children are always vitally affected.

10. Nevertheless, despite the far-reaching and potentially permanent nature of magistrates' court orders in matrimonial matters, the jurisdiction remains basically an inexpensive and prompt means for the relief of matrimonial disputes, and it is, in our opinion, essential to retain as far as possible the 'summary' nature of the jurisdiction. The most satisfactory way of reconciling these two considerations lies, it is felt, with the courts themselves: causes must be speedily brought to trial yet carefully adjudicated upon, and high standards of justice must be maintained in order that 'summary' be not synonymous with 'inferior' or 'hasty'.

11. The recent introduction of legal aid has resulted in a greatly increased degree of legal representation in matrimonial matters in

magistrates' courts, and constitutes parliamentary recognition of the importance of the work carried out under this jurisdiction. It was felt, therefore, that the Committee's Terms of Reference called for enquiry into three main questions:

1. Are magistrates' courts suitable tribunals for the trial of domestic proceedings, or should the jurisdiction be transferred to other courts?
2. If the jurisdiction remains with the magistrates' courts, what changes, if any, are required in composition and procedure?
3. Is the present system of appeals suitable?

Effect of Legal Aid

12. The increase of legally represented cases, due to the introduction of legal aid in matrimonial jurisdiction in magistrates' courts, has been large. The forecasts varied from 'considerable' to '100%', and experience since appears to have borne out these forecasts, although account must be had of the fact that there may have been an initial spate of cases and that the true level will not be known for some time. Nevertheless, there seems to be no doubt that there will be an overall and substantial increase of cases with the parties legally represented. For example, many wife complainants are required to bring proceedings by the National Assistance Board and such complainants are eligible for legal aid.

13. The actual experience of the courts since the availability of legal aid in magistrates' matrimonial proceedings is illuminating. Every court of whom we enquired gave unqualified approval to the introduction of legal aid, stressing that it had enabled the courts to achieve better justice. This in itself is likely to reduce substantially the volume of complaint and has, we believe, already done so.

14. Two other significant points have emerged. First, there has been since the introduction of legal aid *a noticeable increase in the number of reconciliations taking place before the case has been disposed of.* Secondly, nearly every court said that there was no appreciable increase of court time needed as a result of the introduction of legal aid. Some cases tended to take longer because they were investigated in greater detail, and all cases were better prepared with beneficial results to both the court and the parties. Other cases, on the other hand, which might have been unnecessarily prolonged, were expeditiously dealt with due to the availability of expert advice in the conduct of proceedings. The overall result was no increase in court time and, in some instances, a saving.

15. All the evidence goes to show that both the introduction of legal aid into this jurisdiction and the method of its operation have been strikingly successful in meeting the needs of the community.

PART I

SUITABILITY OF MAGISTRATES' COURTS

The Present System

16. The tribunal must at present comprise two and not more than three justices of the peace and, where possible, one of these should be a woman. At present, in metropolitan London, and in certain other areas of dense population, a stipendiary magistrate sitting alone exercises the powers of such a tribunal. Major criticisms have been made with regard to the present system; these include complaints that some courts are over-influenced by their clerks or are biased in favour of wife complainants, or give the appearance of over-hasty trial, and that justice is delayed. Accepting that there is undoubted substance in such criticisms with regard to certain courts, it is the view of the Committee that in the majority of magistrates' courts the jurisdiction is well administered. Furthermore, when considered from the purely practical point of view, it is also our view that the framework of the present system of jurisdiction is adequate and basically suitable. That this is so is the more easily recognised if other proposals are first considered.

Possible Alternative Systems

17. The Committee considered severally or in combination a number of proposals of which the principal ones were that:

1. All matrimonial causes and matters affecting children should come before a single system of courts, *i.e.* combining the existing High Court, county court and summary jurisdictions.
2. Judges of such courts should sit with Matrimonial Assessors (*e.g.*, lay magistrates) on the ground that a single judge is not always a satisfactory tribunal.
3. The strength of the county court bench should be increased so that the county court judge would hear all matrimonial causes from the other existing jurisdictions with or without matrimonial assessors.
4. The jurisdiction should remain with lay magistrates sitting in separate Domestic Courts, the chairman being legally qualified.
5. The jurisdiction should remain with the lay justices, but provision should be made for the clerk of the court to sum up in contested cases as a judge advocate does in courts martial (to counter the criticism of 'trial by clerk' in some courts).

6. Stipendiary magistrates should be appointed regionally to hear all contested cases.
7. Panels of lay magistrates, willing to serve on a rota, concentrating solely on matrimonial cases, should be set up so as to enable them to acquire special experience.

Essential Practical Considerations

18. Keeping in view the practical necessity of recommending that which is feasible as well as nearest the ideal, the Committee considers that, while these proposals might meet some of the criticisms, they all leave other problems unsolved and create new ones. On the other hand, to leave things as they are does not meet the needs of today and substantial improvement is required. It is essential that matrimonial matters should be heard by tribunals with an understanding of the background and the problems of those appearing before them.

19. The matter of the atmosphere and the building where matrimonial cases are heard is of real importance; speed in dealing with cases is essential, although not to be sought at the expense of other important factors; a degree of centralisation and specialisation is now possible and desirable. These, and other similar matters, are considered in Part II.

20. Above all, the advantages of the present system whereby summary decisions can be obtained speedily and inexpensively in the magistrates' courts while the decisions of permanence and change of status are reached after the fuller preparation and trial in the High Court outweigh any advantage of a fused jurisdiction even if the practical difficulties of the latter could be overcome.

21. Apart from matters of fundamental principle, the possible alternative systems proposed create practical difficulties of their own; for example, any proposal to replace lay justices by stipendiary magistrates is made impracticable by the difficulty there would be to find a sufficient number of suitably qualified lawyers. Moreover, there is considerable weight in the view that a tribunal of three is the best for this jurisdiction. In questions between man and woman and on the welfare of children the lay view has virtues of its own.

The Importance of Training

22. The value of the lay magistrate is enhanced when it is based on an understanding of the legal issues and procedure, and in our view instruction of magistrates in their duties is all-important. Training of magistrates is hardly within our Terms of Reference, but we would suggest that, in addition to the schemes of general instruction available for newly appointed magistrates, a more specialised course

of instruction in matrimonial law and procedure should be available for those who regularly sit in the Domestic Courts.

Recommendations

23. It is therefore recommended that no radical alteration be made in the present system of jurisdiction although practical improvements are desirable and in some cases urgently required. This recommendation is based on the view that the magistrates' courts are well able to, and the majority in fact do, exercise this jurisdiction efficiently and to the satisfaction of the public; and on the further view that practical considerations of time, money, personnel and accommodation would not permit of any better substitute. The adjudication of the magistrates' courts remains essentially summary.

PART TWO

IMPROVEMENTS AND REFORMS IN THE PRESENT SYSTEM

General

24. It has already been noted in Part I that the matrimonial jurisdiction of magistrates' courts is exercised and administered by a bench of lay magistrates or by a stipendiary magistrate with equivalent powers. Some problems are general; some are local. Certain changes recommended are of general application; others relate to the special problems encountered because of the special factors. Difficulties of accommodation cut across any dividing lines, whereas questions of delay seem mainly to affect areas of dense population. Similarly, procedural changes are of general application, whereas staffing difficulties mainly affect cities or large towns. The reforms recommended by the Committee are designed to meet the type of criticism of the present system mentioned above and to make other improvements. The system, to continue its success, must command public confidence.

Functions of the Justices and their Clerk

25. It is essential that the justices themselves should exercise the jurisdiction not only in fact but also in appearance. Not infrequently there are complaints of substance that courts are over-influenced by their clerks and, where these obtain, the maxim that justice must be done and must be seen to be done is manifestly in danger in either or both of its limbs. It is recognised that justices are generally laymen dependent, so far as the law is concerned, on the help and advice

of their clerk, whether or not he has a legal qualification. It is further recognised that in many cases a question of law arises in some form or another and for these reasons it follows that the relationship between the bench and their clerk is at once extremely important, and from the point of view of justice being seen to be done, delicate. Clearly the decision in every case before the courts must be the decision of the justices alone. No one should be given the impression that the decision has been arrived at in any other way. On the other hand it is essential that the justices should have fully available to them the services of their clerk.

26. These apparently conflicting requirements are quite capable of practical reconciliation if the terms of the Practice Direction, issued by the President of the Probate Divorce and Admiralty Division on January 15, 1954, are always observed. In that Direction ([1954] 1 All E.R. 230) the late Lord Merriman, referring to the sort of complaint at present under consideration, remarked that although allegations of undue interference by the clerk were not often grounds of appeal to the Divisional Court:

> "Nevertheless, it is at least as important in cases of this class as in cases of other classes dealt with by courts of summary jurisdiction that the decision should be that of the justices themselves and not that of the justices and their clerk, and that, not only should this be so in fact, but that nothing should be done to give the parties or the public the impression that the clerk is influencing the decision. I am therefore in complete agreement with Lord Goddard C.J. that it should not be regarded as a matter of course that, if justices retire to consider their decision, the clerk should retire with them. Moreover, whether the justices invite the clerk to retire with them or send for him in the course of their deliberations, I agree that the clerk should always return to his place in court as soon as the justices release him, leaving them to complete their deliberations alone. Bearing in mind that domestic proceedings are often lengthy and may involve points of law in relation to the complaint itself or to the amount of maintenance, and that this court insists that a proper note of the evidence must be kept, and that, in the event of an appeal, justices must be prepared to state the reasons for their decision, I recognise that more often than not justices may properly wish to refresh their recollection of the evidence by recourse to the clerk's note, or to seek his advice about the law, before coming to their decision.
>
> "Having regard to the high standard of care which is generally shown by courts of summary jurisdiction in dealing with these domestic proceedings, I do not think it is necessary for me to say more than that I am confident that justices taking part in them may be trusted to act, and to ensure that they appear to act, on the fundamental principle that they alone are the judges."

27. Strict observance in every case of this Direction will ensure the safety of the fundamental principle that the justices alone are the judges, and enhance the reputation of the court.

Limits of Justices' Commissions

28. We have considered the question whether advantages would accrue if neighbouring benches could act as 'reliefs' for each other as the need arose. Our information is that while in some areas there are practical difficulties in other areas such an innovation is feasible and would be helpful. City and borough benches could well assist the counties adjoining them and vice versa were it not for the separate Commissions of the Peace.

The Composition of the Bench

29. As for the quality of the justice administered in this jurisdiction, we recommend that voluntary panels of magistrates should be drawn up, whose members would be 'specialists' in the sense that they would be prepared to undertake more matrimonial hearings than their colleagues, but not in any sense that such hearings should constitute their exclusive function. Any tendency towards such exclusiveness is deprecated. Such panels have already operated informally with success in certain petty sessional divisions.

30. The bench for substantive hearings should always consist of three justices "including, so far as practicable, both a man and a woman" in accordance with the provisions of the Magistrates' Courts Act, 1952, s. 56 (2). Such a bench overcomes the difficulty created when there is an equal division and the stabilising influence of fellow justices contributes much to the judicial impartiality required of the court. Chairmen and deputy chairmen of the matrimonial panels should be chosen by secret ballot. It is considered that there would be valuable advantage in having such elections annually, since the frequency would stimulate the enthusiasm and interest of the members of the panel. No recommendation concerning the size of the panel is made, because of the widely differing requirements in various parts of the country. In our view appointment must not be automatic. It should rest on suitability alone. Rarely will more than two-thirds of a bench qualify. Similarly, no recommendation is made concerning a special age limit other than that now in force (namely 75) because it is considered that, while age limits are desirable so far as juvenile court benches are concerned, in the case of matrimonial courts age

should be only a factor—albeit an important factor—to be taken into account regarding suitability for the matrimonial bench.

Accommodation

31. It is to be regretted that at the moment the matrimonial jurisdiction of magistrates is almost invariably exercised in the same building as the criminal jurisdiction. Moreover, it frequently happens that a criminal court sits in the same building at the same time as a matrimonial court, with the result that parties to matrimonial disputes are often obliged to wait in the same places as defendants in criminal causes. In far too many courts the accommodation provided was never designed to deal with the volume of work undertaken today and, quite apart from the undesirable factors mentioned above, conditions under which parties have to wait are often unsuitable. Furthermore, facilities for consultation with solicitors or counsel very frequently do not exist at all.

32. It is strongly recommended that the criminal and matrimonial jurisdictions of magistrates' courts should be separated physically as well as procedurally either by sitting in different buildings or at different sessions. The need for this separation is particularly great in metropolitan London and other large cities. As regards the court buildings in metropolitan London, it is felt that these are particularly unsuitable for matrimonial proceedings, but it is recognised that while separate buildings might be preferable their provision may at present often be impracticable. So far as metropolitan London is concerned, we support the findings of the Interdepartmental Committee on Magistrates' Courts in London. In its report that Committee stated in paragraph 23:

> "The existing metropolitan magistrates' court buildings were all built many years ago, and apart from the St. Marylebone Court building (which is an adaption) they are the same as those referred to in the Maxwell Report of 1937. One new court building, for the South-Western division, is now being constructed. The juvenile courts are housed in separate buildings which have been adapted for the purpose. The Maxwell Committee said in their Report (paragraph 66) that the staff had outgrown the office accommodation and that the buildings were defective in other respects, and in general these criticisms still apply; indeed, since the volume of business has increased, they may now be said to apply with even greater force. Even if there were no question of integration, many of the existing buildings would have to be replaced before very long."

While the Aarvold Committee's investigation was of course limited to

the metropolis, it is believed that similar considerations apply wherever old-fashioned courts continue to be used. Having regard to the difficulty of providing separate court buildings, it is recommended strongly that the feasibility of using other existing public buildings for matrimonial causes should be thoroughly investigated. In some areas, town halls are used for some court sittings and it is known that other suitable buildings are in existence and possibly available for such use. We note that sub-section C of Appendix C of the report of the Aarvold Committee indicates that such other buildings are used for Petty Sessional purposes in London.

Minimum Requirements

33. So far as accommodation is concerned, it is recommended that an interim measure would be the setting up of matrimonial courts in such public buildings as may be available, and that the following three requirements should be regarded as the minimal objective:

1. A court room sufficiently large to accommodate the bench, the legal representatives of the parties, the clerk of the court and the parties and their witnesses. This room should provide the dignity essential to a judicial tribunal.
2. Two separate consultation rooms for the parties.
3. A separate room for use as a witnesses' waiting-room, and another for solicitors and counsel.

34. It is further recommended that the atmosphere, appearance and formalities in matrimonial court buildings should resemble as closely as possible those of civil courts. To this end most of us would prefer ushers rather than police in uniform, although the point has been made that in certain circumstances it is useful to have a uniformed woman police officer present. This would be more particularly desirable if matrimonial causes continued to be held in the same building as criminal proceedings.

Procedural Changes

35. As regards this aspect of its work the Committee was particularly conscious at all times of the necessity to retain the essential 'summary' aspect of the matrimonial jurisdiction of magistrates' courts. At the same time, having regard to the far-reaching consequences of the orders made in this jurisdiction, the Committee recommends the following procedural changes:—

36. (i) *Issue of Summons.* There is great variation in the methods of issuing a summons to a complainant. In some courts, a complainant must go before the justices; in others, a complainant has merely to sign a form which is later signed by a justice.

Between these extremes, there is, for example, the method which obtains in London courts, where the complainant often goes first to the probation officer who in turn puts the matter before the court as a good *prima facie* case or otherwise. In all cases, of course, it is open to the court officers to send the would-be complainant to a solicitor for legal advice under the extended legal aid provisions. Also in every case the justices have a discretion to refuse to issue a summons. It is desirable that justices should retain their discretion and that there should be a simple procedure available. It is recommended that a solicitor's request for the issue of a summons on behalf of a client, made in writing and certifying that a *prima facie* case is disclosed, and that in appropriate cases the complainant has had and understood the form required by the Magistrates' Courts (Matrimonial Proceedings) Rules, 1960, r. 3(*a*) (see Appendix C), should suffice in the majority of cases. It is considered that such a procedure would save the time of justices, solicitors and litigants, and ensure a uniform procedural method without impairing the essential discretion of the justices.

37. (ii) *Service of Summons.* This is an important aspect of the procedure, and one which poses a serious problem, since delay in service may give inadequate time for the preparation of the defence and result in adjournment and waste of time. Under the present system, the applicant gives the clerk to the justices the address for service, and it should be stressed that all possible addresses should be asked for and disclosed at this stage. It was noted that where no address is known clerks to the justices can avail themselves of the help of the Ministry of National Insurance and the National Assistance Board. The difficulties of personal service are recognised but so too is its importance. At present, if personal service cannot be effected, the summons may be left at the home or sent by registered post or recorded delivery. In the event of service other than personally, the justices can proceed only if they are satisfied that the summons has come to the defendant's knowledge. In view of the consequences of an order, the importance of this aspect of the matter is self-evident. Since it appears that in some Warrant Offices summonses are apt to lie for appreciable periods of time, it is recommended that an attempt at personal service should be required within a specified time. It is further recommended that the Rules should be changed to require Warrant Offices to render a return to the clerk of the court within seven days of issue and a further return seven days after that of summonses not served by alternative methods. It is recommended that only one alternative method should be valid, namely recorded delivery, and that this alternative should be subject to two safeguards. First, that on proof of non-service there should be provision for any order to be set aside on application to the magistrates duly made, and

secondly, that the order should be served personally or by recorded delivery if the defendant was neither present nor represented at the hearing.

38. (iii) *Delivery of Particulars.* It is considered that short and simple particulars of the allegations in cases of persistent cruelty and constructive desertion should be made available to the defendant on his request. In the absence of particulars in such cases, a defendant is often in difficulties to know the case he is required to meet. To avoid unnecessary delay, it is further recommended that when details are requested they should be supplied within seven days. It is to be noted that there is in certain areas a fairly widespread practice, which the Committee finds valuable and worthy of universal adoption, of serving voluntary particulars with the summons.

39. The Committee has had regard to the President's observations in the case of *Frith* v. *Frith* [1962] 1 W.L.R. 1436. Those observations were directed against the growth of the requirement for particulars in such cases of the sort usually required in the High Court. The Committee respectfully concurs with the view of the President that such a development would inevitably impair the essentially summary nature of the magistrates' jurisdiction. The Committee's suggestion, however, is for brief particulars of an informal type sufficient only to indicate the nature of the case to be met.

40. Were this suggestion to meet with his approval, any procedural change involving the delivery of such particulars could be introduced by a Direction from the President of the Probate Divorce and Admiralty Division similar to that which was issued regarding the delivery of Particulars of allegation of adultery. It is recommended that such particulars should be given by letter in a short concise form and not by way of a pleading.

41. (iv) *Speeches.* Earlier in this part of the Report it has been recommended that the procedure at the hearing of a matrimonial cause in the magistrates' court should follow as closely as possible normal civil procedure. That is to say that each side should have the right of an opening and a closing speech and that the right of the last word should belong to the complainant, saving of course the defendant's right of reply on a point of law. In this connection the present position regarding speeches seems to be most unsatisfactory and often in fact results in wasted time. The present position is that each side has the right to one speech. If the defence calls more than one witness, then the defence may make a second speech with the leave of the court; if such leave is granted, the complainant has a second speech as of right. There is also the separate right of a second speech and the reply thereto on points of law. It is considered to be a disadvantage for a complainant to have no terminal speech, particularly

if there has been an adjournment in the course of the hearing. If there were a right to a second speech, the complainant would not have to anticipate the case to be met and, as a result, openings would be likely to be very much shorter. It is therefore strongly recommended that the order of speeches in matrimonial causes in magistrates' courts should be the same as in civil proceedings.

42. (v) *Privilege attaching to Ancillary Welfare Bodies.* There is a growing value to the community in the work done in conciliation by members of the Probation Service and by members of other organisations such as the National Marriage Guidance Council. It is self-evident that the basis of their work is that those people whom such bodies seek to assist should have implicit trust in the confidential nature of any disclosures made by them to representatives of such organisations. As the law stands, privilege and protection extend to such conversations and interviews unless waived by the parties. It is recommended that this position be not weakened. Oblique reference to the fact or content of such conversations and interviews should be forbidden. In the absence of waiver no evidence either direct or indirect of such matters should be admitted.

The Question of Delay

43. Although it is clear that, in many courts, there is a substantial delay before the final disposition of cases, the pessimistic forecast concerning the effect of the introduction of legal aid in this jurisdiction has not been fulfilled, if the experience so far is a true guide. Nevertheless, the question of delay remains a serious problem since it involves inevitably the adjournment part heard of many cases. Three factors emerge:

(*a*) That the courts necessarily make many interim orders. While this has some disadvantages, it not infrequently provides opportunities and time for efforts at reconciliation.

(*b*) That a significant number of cases will take more of the court's time because they will be more thoroughly investigated due to the provision of legal representation for the parties. In many courts this will create a difficulty in the provision of a constantly constituted bench. One solution to such a difficulty would be to increase the number of justices available or to create matrimonial panels as recommended above (see §§ 29, 30). Where this sort of delay occurs, the interval between hearings should be as short as possible, because it is difficult to retain an impression of parties and witnesses over any substantial period of time. Where a lengthy adjournment is unavoidable it is essential that transcripts of the evidence should be available for the court and for the representatives of the parties. Where the adjournment is not lengthy it is in the highest degree desirable either that transcripts be available as above or that the clerk's note be read over in the presence of the court and the representatives of the parties before the hearing proceeds.

(*c*) That there may be a disinclination to start a case which can only be part-heard if a long adjournment has to follow and this in itself tends to waste sitting time.

The Long or Unusually Difficult Case

44. In some instances, magistrates' courts are handicapped by difficulties in dealing with a long cause or a particularly difficult legal problem. While these considerations affect only a comparatively small percentage of cases, it is an important percentage; it is apt to disrupt the other work of the courts, and improvements should therefore be sought (see §§ 45, below). Concerning the long cause, much can be done by responsible and full co-operation between practitioners and clerks to the justices, although there remains in many areas the difficulty of obtaining a constantly constituted bench over a period of days. There is already statutory provision for reference from the magistrates' courts to the High Court; this provision is in fact very rarely used and the reason, we think, is that to have recourse to it, save in exceptional cases, would lead to the very delays which the summary jurisdiction exists to avoid.

Special Matrimonial Petty Sessional Courts

45. It appears that about a third of the magistrates' courts of whom we sought assistance cannot arrange hearings from day to day or can only do so if they have prior notice of the requirements. In this respect it is noteworthy that only three of the courts who gave this Committee information stated unequivocally that they could make such arrangements. Having regard to these matters, and also to those cases which in any event involve a particularly difficult legal problem, it is recommended that Special Matrimonial Petty Sessional Courts should be constituted of justices who are experienced in matrimonial jurisdiction and who could sit from day to day, preferably with a legally qualified justice as chairman. These courts would be set up by the Lord Chancellor where he thinks necessary and practicable, with a geographical jurisdiction which would vary in extent in accordance with the volume of work for the particular area and the availability of justices and staff; where convenient the geographical area could comprise more than one petty sessional area. A precedent for such courts covering an area consisting of several petty sessional

divisions now exists in the combined juvenile courts to be found in several counties. Such a court was proposed in the Memorandum submitted to the Aarvold Committee (see Appendix A), and the same name is recommended for use throughout the country.

Purposes of Special Matrimonial Petty Sessional Courts

46. In metropolitan London and in some cities enjoying the services of a stipendiary magistrate there is a tradition that the matrimonial jurisdiction is administered by legally qualified magistrates. In view of the permanent or semi-permanent nature of the order that could be made by the magistrates, in terms of financial liability; of the potentially serious implication of the magistrates' decision in subsequent High Court proceedings; and of the fundamental social importance of the trial of a matrimonial issue at first instance, it is self-evident that the greatest care must be directed towards ensuring that matrimonial hearings receive the attention they deserve. This is not to suggest either that lay justices are not capable of exercising the jurisdiction efficiently, or that in any court, lay or professional, the jurisdiction is carelessly administered. Nevertheless, it is quite clear that at the moment courts in areas of dense population are harassed by the problem of time.

47. Where time and pressure of work are not the obstacles, quite often in other areas the difficulties of providing a constantly constituted bench also assume formidable proportions. The recommendation for the Special Matrimonial Petty Sessional Court, therefore, is designed to meet and defeat these difficulties without seeking to curtail or reduce the jurisdiction as at present exercised or to impugn the standards of whose who administer it.

48. In this respect the Committee recommends that the matrimonial jurisdiction of the magistrates' courts should be exercisable, particularly in metropolitan London, by lay justices as well as stipendiary magistrates, and that these two forms of court should be integrated completely, not only in London but wherever else they exist side by side in the country.

49. The object of the Special Matrimonial Petty Sessional Courts would be to relieve delay caused by adjournments in those areas where difficulties exist in providing from day to day a constantly constituted bench, and to relieve the burden of work and consequent congestion and pressure upon the court in those areas of dense population where these factors have achieved importance due to the volume of work at present overstraining the system.

50. This object will best be achieved if the Special Matrimonial Petty Sessional Courts sit to hear cases involving difficulties of law or heavy contests of fact. It is further recommended that the jurisdiction

of the Special Matrimonial Petty Sessional Courts should be by *ex parte* application to the clerk to the justices, or by reference by a magistrates' court. This would, of course, be an administrative matter, and indeed would depend upon co-operation between practitioners and the clerk.

51. It is probable that such a court as the one recommended would, in London, have to sit on a permanent basis and indeed there might be a need for more than one such court in the metropolitan area. So far as other areas are concerned, the court envisaged could and should be semi-peripatetic, especially in areas of sparse population. Its constitution need not be constant and preferably should not be so. It would be the responsibility of the Magistrates' Courts Committees to make representations to the Lord Chancellor regarding the setting up of such courts and there should be created for them a panel both of lay justices and of legally qualified chairmen to be called upon as required. The panel of lay justices would be an extension on a national basis of the matrimonial panel referred to in paragraphs 29 and 30 above.

52. The provision of a Tribunal such as the one envisaged would enable the Courts whom it served to gauge their time much more accurately, thus avoiding dislocated lists due to unusually difficult or protracted cases. At the same time, its existence with the jurisdiction referred to above would enable parties feeling that their cases merited particular consideration to have a right of choice to go before the proposed tribunal.

53. It is considered that this proposal for a Special Matrimonial Petty Sessional Court is a logical extension of the ideas behind the Walton Street experiment and so far as those areas of dense population are concerned—and particularly metropolitan London—its provision would materially reduce delay. The Special Matrimonial Petty Sessional Court involves none of the disadvantages attaching to alternative systems previously referred to in this Report (see paras. 16 & 17) but, as it is both practicable and practical, goes far to meet the public criticisms of the present system therein referred to.

54. The Committee appreciates that legislation will be necessary to implement these recommendations, and that payment of subsistence to justices might be essential.

Staffing Difficulties

55. The Committee is very conscious that the implementation of many of its recommendations presupposes the availability and employment of sufficient suitable staff. It is quite clear that grave difficulties already exist so far as the employment of professional and administrative staff is concerned. The presence of this difficulty in the system

as it stands at present serves only to emphasise its gravity and urgency when the foregoing recommendations of the Committee are considered.

Clerks to the Justices

56. It is essential that clerks to the justices should always be qualified lawyers, and it is not considered that to allow unqualified clerks to sit, except for such matters as amount of maintenance on variation applications, is right in principle or represents a proper attempt to solve the problem of the shortage of qualified staff. It is considered that, if it were a rule that qualified clerks conducted courts in all cases save such simple matters as those mentioned above, an indirect effect would be to raise the status of the appointments. Directly, such a course is essential because of the frequency with which questions of law arise, and also such important questions as the admissibility of evidence.

57. The statutory qualifications require that qualified applicants for posts as clerks to justices must be solicitors or barristers of at least five years' standing, or unqualified persons of at least 14 years' experience. These requirements show that Parliament recognised in 1949 the need for professional quality. The duties, responsibilities and professional skill involved have increased significantly in the last 14 years. So has the volume of work. If adequate candidates are to be attracted to the profession, they must be adequately remunerated, and comparably with town clerks (who have no statutory need to be qualified) and with solicitors and barristers in private practice. This is not so today. The present scales are unrealistic. The machinery for appropriate salary adjustment is available in the existing National Joint Negotiating Committees, representative of the Magistrates' Courts Committees, the Paying Authorities and Officers. It is now, in the opinion of the Committee, vitally necessary for the Home Office to urge on the Magistrates' Courts Committees that salary scales both for clerks and assistants shall be brought into line with comparable professional remuneration elsewhere to attract the grade of personnel essential if magistrates' courts are to maintain their efficiency. Without such qualified personnel it will prove impossible to keep pace with the volume of work which has to be handled.

Deputy Clerks

58. The position of deputy clerks is worse than that of the clerks themselves. Their salary by national convention approximates to two-thirds of that of the clerk. Since the salary of justices' clerks, whether whole-time or part-time, may be fixed at the discretion of the Magistrates' Courts Committees within limits of approximately £230

both at the bottom and at the top of the ranges; since in any event the salary range for clerks varies widely within defined units of population; and since the deputy's salary is subject to further local variations to take account of the responsibilities borne and the other duties undertaken by him, it is immediately apparent that there is lacking any properly defined career structure.

59. So far as deputy clerks are concerned the profession is small. There are only some 600 clerks, including those who are part-time, and the number will reduce as part-time clerks are replaced by full-time. The number of deputy clerk posts with a salary which attracts a qualified man is now very small. There is therefore a shortage of qualified deputies suitable for promotion. The seriousness of this problem is increasing every year. It is recommended as a matter of urgency that salary scales be reviewed and made attractive on a uniform basis for comparable units of population and bearing in mind proper professional parallels. It is not enough to rely on vocation alone. The annual intake required to offset wastage is between 30 and 40. If the Careers and Appointments Boards of all universities with a law faculty were fully informed of the opportunities of the profession (as, for example, at Nottingham and in the proposed Home Office Booklet) sufficient suitable men and women should be forthcoming, but only if the remuneration is adequate.

60. It should be recognised that a man of the right educational background, entering the office of a clerk to the justices, is entering a profession. He should be given proper opportunity for qualifying himself for the post of clerk to the justices, and the rest should be left to his own initiative. Such recognition and opportunity should attract the right people, and it is further considered that the Magistrates' Courts Committees should be kept informed of young entrants and have the opportunity to watch them through information regularly submitted to them by their clerk, perhaps most suitably submitted in the form of an annual report.

Professional Qualifications and Promotion

61. The career of justices' clerk could begin in quite junior posts and should then attract juniors in significant numbers. These are badly needed. In contrast with many professions, it is becoming increasingly difficult to rise to the top inside this branch of the law. If the clerk is a solicitor he may, if he is so minded and if his Magistrates' Court Committee authorises it, accept a junior into articles. The new requirements that an articled clerk (other than a law graduate) shall attend The Law Society's School in London is a serious obstacle. Rarely, if ever, can a Magistrates' Court Committee spare an assistant for the requisite time, especially when many are under-staffed. The

Committee hopes that it will be possible to remedy this. In the present situation, however, the assistant's only hope is to obtain a degree in law before entering articles. If he is earning his living as a junior clerk, he can only graduate externally in his spare time. This is not easy.

62. If the clerk is not a solicitor, the position is worse because his assistant cannot enter solicitors' articles. Nor can he become a barrister, because the Consolidated Regulations of the Inns of Court do not permit candidates so employed to become Bar students. The Committee questions whether the reasons for this rule are still valid in this particular context: candidates from many nations and ways of life and from a wide range of intellectual ability sit the Bar Examinations, and if assistant clerks to the justices were permitted to do so a promotion ladder would be created and the right men and women would ascend it to fulfil the searching requirements of the higher posts. The Committee therefore recommends that an approach should be made to the Inns of Court to seek an appropriate amendment to the Regulations so as to open to assistants clerks to the justices the avenue of qualification as a barrister. The Committee further recommends that it be urged upon Magistrates' Courts Committees to pay articled clerks while at law school. If these parallel proposals were implemented, it would be possible for a flow of staff to become qualified and thus to become eligible for higher posts. While section 20 (3) of the Justices of the Peace Act, 1949, affords, it is true, some help to assistants in offices where the justices' clerk is not a solicitor, paragraph (*a*) of that sub-section shows that it is of no help to assistants appointed after 1954.

63. The Committee has not overlooked section 20 (iv) (*b*) of the Justices of the Peace Act, 1949; mention has already been made of the appointment of unqualified clerks of 14 years' experience. The Committee understands that the Home Office would prefer this provision not to be used in the future and the Committee wholly approve. The result is that, as things are, only juniors and assistants in offices where the clerk or his deputy is a solicitor can ever become justices' clerks themselves, and then only with greater difficulty than at present confronts a clerk in private practice in qualifying. This not only renders the career less attractive for the young, but prevents potential clerks qualifying and contributes to the shortage of suitable clerks. The Committee recommends that close and immediate consideration be given to the possible removal of the obstacles.

Administrative Staff

64. Similar difficulties are apparent so far as administrative staff is concerned. Such staff are essential to such matters as the preparation of minutes and notes of evidence, quite apart from the routine

administrative matters connected with any court. There is in some areas a shortage of unqualified staff. Low salaries, lack of opportunity to qualify, the need to change districts on promotion with all the difficulties it involves (house-hunting, change of schools, expense, etc.) and lack of publicity for the work as a specialised career are all factors contributing to this shortage.

Importance of the Staffing Problem

65. Until the position with regard to both qualified and unqualified staff has been radically improved for the better, the career for both remains unattractive. Once there is enough to offer, there are many avenues available for adequate and effective publicity, and improvements will be self-generating.

66. The Committee is of the opinion that no one of the problems emerging from its investigations is of more practical importance than the staffing problem. Unless it is solved, and solved urgently, at the best the standard of justice in magistrates' courts will seriously deteriorate, and at the worst the structure of these courts will break down.

PART III

APPEALS

67. This part of its terms of reference caused the Committee its greatest difficulty. It was the only matter on which the Committee could not reach unanimity and accordingly it sets out the factors which are material and the alternatives available.

68. The Committee believes that for reasons mentioned earlier in this Report there is a substantial number of disgruntled litigants. Furthermore, under the existing practice the court in announcing its decision does not ordinarily state its reasons nor does it record its reasons unless asked to do so for the purposes of an appeal. An appeal lies only to the Divisional Court of the Probate, Divorce and Admiralty Division. That court adjudicates on the notes of evidence (amplified sometimes by affidavits from the parties' solicitors setting out their versions of what evidence was in fact given) and the statement of the justices' reasons. There is no full re-hearing in the sense of oral evidence by the parties and their witnesses, and this limitation deters the unsuccessful party from appealing where otherwise he would. No statistics do or could exist of the number who would appeal if there were a full re-hearing but our estimate was that there might be as many as four or five for every one who appeals now.

Case for Appeal by Way of Rehearing

69. Those of the Committee who are persuaded that an appeal by way of re-hearing should be available think that the existing mode of appeal to the Divisional Court should be retained. They consider, however, it might be improved in detail. They envisage it continuing to exist side by side with an alternative mode of appeal by way of re-hearing, somewhat in the same way as case stated and appeal to Quarter Sessions now exist in other branches of magisterial jurisdiction. They consider that an unsuccessful party who is dissatisfied with a decision on the facts should be entitled to have them re-heard. From that re-hearing (as well as from the court of first instance) an appeal could be to the Divisional Court in the same way as at present, or by case stated as is generally the rule with the appellate function of Quarter Sessions.

70. There are several reasons which justify a re-hearing:

The issues decided in matrimonial causes are of supreme importance to the parties and far-reaching in their effects on the family. There should be an opportunity to put right on appeal a mistaken finding of fact, by a stipendiary magistrate or lay justices. An appeal by way of re-hearing at Quarter Sessions has long been available in many branches of magistrates' work, including affiliation and other civil matters. It is logical that it should be created in the matrimonial jurisdiction. We are aware also that, justifiably or not, there is sometimes dissatisfaction among solicitors and parties to matrimonial causes with the finality of the magistrates' finding; and with the manner in which their reasons for their decisions are expressed for the use of the Divisional Court.

71. At a rehearing, an official shorthand note would be taken. This would give greater assistance to the Divisional Court than the necessarily shorter and sometimes inadequate longhand version made by the clerk to the justices. It clearly cannot give so complete an impression of the evidence and little, if any, of the demeanour of the witnesses.

72. A case dealt with summarily cannot always be prepared with the same mature consideration and attention to detail which can be given to an action with pleadings and other preparatory stages nor can it always be presented with the same professional skill. Imperfections occur in the presentation of the evidence to the court, in some instances due to errors or omissions in the short particulars voluntarily given by the one party to the other. Moreover, there is a laudable anxiety both to bring the case to hearing quickly and to determine the issues expeditiously. Mistakes are sometimes made. Omission of relevant matters are more common. A party surprised by an opponent's evidence does not always make the best reply available.

73. In principle too, there is much to be said for a right of re-hearing where the court of first instance is a single stipendiary magistrate or comprising only lay justices. These may vary very much in their experience, especially of matrimonial cases, the number of which differs widely in different districts. They may vary too in their ability to judge the demeanour and bearing of the parties and their witnesses, a faculty which depends largely on experience. Where there is a direct conflict of evidence, which is not uncommon in matrimonial cases, a correct assessment of the credibility of witnesses is often decisive. Three experienced justices or a stipendiary magistrate experienced in matrimonial law rarely if ever make serious mistakes of factor judgment in a properly presented case, but a court may not always be so constituted or the advocate on the one side or the other may lack the necessary experience. There is then a real danger that an error may be made which cannot be put right by the existing mode of appeal to the Divisional Court, because that court is to a great extent bound by the magistrates' findings of fact. Summary trial must be retained (see § 23, above) but it has the limitations of its nature in the same way as the magisterial bench is affected by its constitution.

74. Appeals to Quarter Sessions in domestic cases will provide a number of problems. Chairmen of Quarter Sessions, and recorders, may be unfamiliar with matrimonial law. The officials will be unfamiliar with the administration and procedure. The expense will be significantly higher than for an appeal to the Divisional Court. Many Quarter Sessions are already embarrassed by the volume of their work. No reliable estimate can be made of the increase which this new right of appeal would bring. These problems, however, could be largely solved by the chairman or recorder sitting with two experienced magistrates drawn from a domestic panel. Legislation would be required, and a precedent is to be found in the provisions as to members of the juvenile panel sitting to hear appeals (Criminal Justice Administration Act, 1962 s. 4 (7) Clause 18 of the Children and Young Persons Bill, 1963). Officials will quickly grow accustomed to the procedure. Where the volume of work is a problem Quarter Sessions might perhaps draw on the Special Matrimonial Petty Sessional Courts (where established) for a suitable chairman and justices, though this would require legislation. Sittings should be at different sessions from criminal business. The number of appeals may not be embarrassingly large if the grant of legal aid certificates for them is in the hands of the Area Legal Aid Committee as the grant of certificates for appeal to the Divisional Court now is. Those who support the right of appeal to Quarter Sessions consider the advantages outweigh the problems. Indeed, they regard it as essential for the proper administration of justice.

75. Even if the view that there should be an appeal to Quarter Sessions is not accepted, it is suggested that such appeal should be given on questions of the weekly payment. A difference of 20 shillings a week can be extremely important for a husband or wife in straitened circumstances, but it seems absurd that the time of two High Court judges should be taken up with such a matter. Further, the time involved bringing an appeal in the High Court may cause financial hardship to one of the parties. An appeal to Quarter Sessions would often be heard within a few weeks and, if our suggestion that magistrates should sit with the chairman or recorder is accepted, by persons familiar with local conditions.

Case Against Appeal to Quarter Sessions

76. The other view is that appeals should lie exclusively to the Divisional Court as at present. Those who hold this view agree with and adopt the reasoning and conclusions in paragraphs 1134 and 1135 of the Report of the Royal Commission on Marriage and Divorce (Cmd. 9678). (See Appendix B.) They consider that the supervisory function of the Divisional Court plays an invaluable part in the development of case law to meet the changing circumstances of the community and in ensuring reasonable uniformity in the magistrates' courts in their approach on matters of principle.

77. As well as the reasons set out in the above-mentioned Report they consider that the following factors should be weighed in the scales:

(*a*) The contention that "it is not always safe to assume the reliability of findings of facts by the magistrates, especially if the defendant was not legally represented" (paragraph 1134) has lost much of its force since the introduction of legal aid.

(*b*) In many cases the issues can be and, in practice, often are relitigated in the High Court in subsequent divorce cases. So if an appeal to Quarter Sessions were introduced the same issues could and would be litigated in three full hearings. There is no reason to suppose that Quarter Sessions are less burdened with work than they were when the Royal Commission reported.

Notes of Evidence

78. So far as the present system of appeal is concerned, it is impossible for justices' clerks to take down entirely accurate and complete notes, and the taking of notes of evidence is, in any case, a great burden on the clerk in addition to his other duties. While the general standard of notes is high, the best solution would be the use of stenotype machines or of tape-recording machines. The employment of shorthand writers has the disadvantage that if there is any substantial interval between the hearing and the request for a transcript the shorthand writer is frequently not available.

Justices' Reasons

79. It is highly desirable that these should be written down on the record at the time the decision is made, for the purposes of any subsequent proceedings. This would avoid the impression that exists at present that some justices' clerks 'edit' reasons, and would avoid any suggestion of the reasons being in the nature of '*post hoc*' reasons to support the court's decision. In a recent case in the Divisional Court it emerged that the clerk of the court had invoked the aid of counsel for the respondent to the appeal in compiling the statement of reasons.

SUMMARY OF RECOMMENDATIONS

1. To meet the practical problems in the present system caused by cases involving difficult points of law or lengthy contests of fact the Committee recommends that Special Matrimonial Petty Sessional Courts, presided over by a legally qualified chairman, should be set up in areas selected by the Lord Chancellor. The provision of such courts would enable all cases to be heard without delay and would relieve the pressure on the present system (§§ 45–54).

2. Justices' reasons should be written on the record when the decision is made (§ 79).

3. Arrangements whereby lay justices and stipendiary magistrates sit together should be more widely extended (§ 48).

4. Otherwise, no basic changes are recommended although the following practical and procedural improvements should be made:

(*a*) there should be a higher minimal standard of court accommodation, including provision for consultation and witnesses (§§ 33–34).

(*b*) the criminal and matrimonial jurisdiction of magistrates' courts should be separated physically as well as procedurally (§ 32).

(*c*) summons should be served quickly and personally (§ 37).

(*d*) in the majority of cases a solicitor's written request for a summons, showing a *prima facie* case, should suffice (§ 36).

(*e*) in cases of cruelty and desertion short and simple particulars in the form of a solicitor's letter should be made available to the defendant on request (§ 38).

(*f*) the order of speeches in matrimonial proceedings should be the same as in civil proceedings in the High Court (§ 41).

(*g*) the privilege attaching to interviews and conversations with probation officers, clergymen and ancillary welfare bodies should be fully preserved (§ 42).

(*h*) lay magistrates hearing matrimonial cases as part of their work should be specially trained and appointed to a domestic panel (§ 22).

5. Urgent attention should be paid to ensuring the provision of properly qualified staff for magistrates' courts and in particular:

(*a*) salary scales should be brought into line with comparable professional remuneration and the career possibilities should be adequately publicised (§§ 57, 58, 59 and 64).

(*b*) Magistrates' Courts Committees should be urged to pay articled clerks while at Law School (§ 62).

(*c*) the Inns of Court should be asked to allow Justices' Clerks Assistants to qualify as Barristers (§ 62).

6 A majority of the Committee (3 members dissenting) recommends that there should be a right of appeal to Quarter Sessions as in other fields of magisterial jurisdiction. This appeal would be by way of re-hearing and would constitute an alternative to the present appeal to the Divisional Court. Appeal could then lie to the Divisional Court from both the summary court and the rehearing (§§ 69–74). In any event, there should be a right of appeal to Quarter Sessions on questions of amount of weekly payments (§ 75).

APPENDIX A

RECOMMENDATIONS SUBMITTED TO THE AARVOLD COMMITTEE

At an early stage in its work the Committee was invited to submit evidence in the form of a written Memorandum for consideration by the Departmental Committee on Magistrates' Courts in London. That Committee's Terms of Reference were wider than ours, but we submitted a Memorandum dealing with the sitting of the Courts and the distribution of their work; the composition of the Tribunal; and suggested interim measures to relieve the present situation. The recommendations of the Committee contained in that Memorandum have not been altered but have been confirmed by our subsequent work. These are therefore embodied in the recommendations contained in this Report, but it is useful at this stage to compare them with the relevant recommendations presented to Parliament by the Secretary of State for the Home Department and the Lord Chancellor

in January, 1962, from the Report of the above-mentioned Departmental Committee, so far as these are relevant to our Terms of Reference:

Summary of our Recommendations to the Departmental Committee

1. Criminal and matrimonial jurisdictions of magistrates' courts should be clearly separated. If possible, separate buildings should be used. If this is impracticable, separation should be emphasised as far as possible by using properly adapted rooms at clearly defined and separate times.
2. The Maxwell Committee's (1937) recommendations concerning integration is wholly endorsed but extended. A Special Matrimonial Petty Sessional Court consisting of a qualified lawyer and two lay Justices should be established to hear long or difficult cases by reference from any magistrates' matrimonial court, or by choice of the parties. In the metropolis rotas of chairmen (to be remunerated on a Sessional basis) and special panels of justices willing to undertake such work should be maintained.

Relevant Recommendations of the Departmental Committee

1. Separation of jurisdiction as mentioned in (1) above implicitly recommended in that Recommendation 24 advocates a separate courtroom for juvenile and domestic proceedings. Recommendation 46 further advocates a court for domestic proceedings in each court's division as a general rule.
2. Integration fully and unreservedly advocated: many of the Recommendations deal with the minutiae of the implementation of this.

The Departmental Committee's Report contained no express recommendation concerning the Special Matrimonial Petty Sessional Court, but made favourable reference to the concept of such a court in the body of its Report:

> "162. It has been suggested that a special matrimonial court composed of three justices, one of whom should be a qualified lawyer and paid on a sessional basis, should be established to hear cases involving particularly difficult points of law or questions of fact, or which are likely to be protracted. We think there may well be some merit in this proposal but we are not convinced that the creation of such a court will be necessary if our other recommendations are implemented. We suggest that this proposal should be deferred for consideration later in the light of experience of the operation of the integrated courts."

The Departmental Committee's Terms of Reference, though wider than ours, were of course geographically limited to Metropolitan London. In passing from this aspect, by way of commentary upon our own findings concerning the problems of suitable staffing, it is noteworthy that the Departmental Committee made important recommendations concerning staffing which indicate that it, too, recognised the vital importance of this matter.

APPENDIX B

EXTRACTS FROM THE REPORT OF THE ROYAL COMMISSION ON MARRIAGE AND DIVORCE (Cmd. 9678)

1134. In view of the representations made to us by those who were themselves concerned with matrimonial cases in the magistrates' courts, we have given very careful consideration to the suggestion that there should be a right of appeal in such cases by way of re-hearing to the quarter sessions, coupled with a right of appeal on points of law by case stated to the Divorce Division. We have, however, with three dissentients,* decided to reject the proposal. In our opinion the conduct of cases by magistrates is on the whole good, and we think that in general a magistrates' court is just as competent to get at the truth on the evidence as a court of quarter sessions would be. Moreover, the Divisional Court is free to differ from the findings of fact and can do so if it thinks that the evidence is insufficient to support the findings. In practice, where the Divisional Court considers that the first trial has been unsatisfactory, it usually orders a re-hearing of the case by the magistrates. We would not feel justified in recommending that there should be an appeal on the facts to quarter sessions (or some other local tribunal) in order to make provision for those very few cases where perhaps a complete re-hearing might be of benefit. On the other hand, if such an appeal were allowed, we think that advantage would be taken of it in very many cases where there was no real justification; it is only human nature to want to have a second trial of one's case before a new bench if one can. Quarter sessions are already overburdened and it would be unreasonable to expect them to cope with the additional volume of work which would result.

1135. There is, however, a second and in our view conclusive reason for rejecting the proposal. We consider it essential that the Divorce Division should exercise a controlling and supervisory role

* Mr. Lawrence, Mr. Mace, Mr. Maddocks.

in respect of the matrimonial jurisdiction of magistrates' courts. Its function in keeping the law uniform in matrimonial matters is especially important because there are so many magistrates' courts throughout the country, the decisions of which may have an important effect on the status of the parties. It would be very difficult for the Divorce Division to discharge this function effectively if its appellate jurisdiction were confined to cases where the facts are not in dispute and the sole issue is a point of law. There is not a large number of such cases. In the majority of matrimonial appeals questions of law and fact are inextricably mixed; and all such appeals would of course go to quarter sessions. Thus, the Divisional Court would be deprived of a very large part of the work which it at present does, and in such circumstances it is difficult to see how the Divorce Division could continue to exercise an effective control over the matrimonial jurisdiction of magistrates' courts.

APPENDIX C

NOTICE TO PARTIES OF COURT'S POWER TO MAKE PROVISION WITH REGARD TO CHILDREN

Parties to complaints under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, are informed that at the hearing of such a complaint the court has power to make provision for any of the following purposes as regards any child of both parties or any child of one party who has been accepted by the other as one of the family:

(*a*) custody (which may be awarded to either party or to a third person);
(*b*) access to the child by either or both parties (or anybody else who is a parent of the child);
(*c*) the payment of maintenance for the child by either or both of the parties.

In certain exceptional circumstances the court may commit the child to the care of the county or county borough council or place him under the supervision of a probation officer or of the council.

The court may exercise these powers whether the complaint asks for any provision about the child or not and whether any other order is made on the complaint or the complaint is dismissed.

At the hearing of the complaint the court will hear anything the parties may wish to say on these matters.

The court cannot make its final decision on the complaint until it has decided whether or not, and if so how, to exercise these powers.

JUSTICE

British Section of the International Commission of Jurists

Justice is an all-party association of lawyers concerned, in the words of its constitution, "to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible: in particular, to assist in the maintenance of the highest standards of the administration of justice and in the preservation of the fundamental liberties of the individual." It is also concerned to assist the International Commission of Jurists in its efforts to promote observance of the Rule of Law throughout the world.

JUSTICE was founded in the Spring of 1957 following a joint effort of leading lawyers of the three political parties to secure fair trials for those accused of treason in Hungary and South Africa. From this co-operation arose the will to found a permanent organisation. A preamble to the constitution lays down that there must be a fair representation of the three political parties on the governing Council, which is composed of barristers, solicitors and teachers of law.

In the six years of its existence, JUSTICE has become the focal point of a growing public concern for the fair administration of justice and the protection of individual rights and freedom. It has made reports and recommendations on a number of legal problems (see below), and matters now under review include the working of the criminal appeal system, and certain aspects of the law relating to trade unions and trade associations. In our overseas territories JUSTICE has played an active part in the effort to safeguard human rights in multi-racial communities, both before and after independence; and has made special studies of legal aid provisions and of detention without trial.

Membership of JUSTICE is open to both lawyers and non-lawyers and inquiries should be addressed to the Secretary at 1 Mitre Court Buildings, Temple, London, E.C.4. Tel. CENtral 9428.

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