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LAWYERS' EMPIRES: THE ANGLICISATION OF THE MANX BAR AND JUDICIARY

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I. INTRODUCTION

The Isle of Man is a very small jurisdiction, roughly equidistant from England, Ireland, Scotland, and Wales. At various times in its history it has been dominated by one or other of its larger neighbours. Since 1765 it has been under the political and legal control of the British Crown, although the Isle of Man has never been absorbed into the United Kingdom.

The special status of the Isle of Man as a separate territory, rather than an administrative unit such as a county, has led to it retaining its own unique laws and legal system.¹ Thus, there are distinct Manx courts, manned by distinctively Manx judicial officers, administering a body of law which, while often identical to English law in content, remained formally distinct and, in some areas, different in substance.

This unique legal system was, after 1777, served by a local, professional bar. The Manx Bar is a unified body, by which is meant that all the functions required of a legal profession are carried out by a single profession—the advocates—rather than dividing the roles between two separate professions—such as the barrister and solicitor in England. Thus, after 1777 a single professional body was responsible for providing legal advice to private individuals and state officials and arguing cases in the Manx courts.

I have approached the Anglicisation of the Manx legal system from

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1. This might be considered as begging the question, as it could also be argued that the unique laws of the Isle of Man led to retention of a separate identity. The point is not crucial to this Article.

the perspective of legal doctrine elsewhere.² The purpose of this paper is to show the importance of the composition of the Manx Bar in this Anglicisation. It is submitted that, as well as providing added depth to the understanding of the lawmaking process in a common-law jurisdiction, this study also shows the value of the Manx jurisdiction as an area for study by those seeking to examine practical details of the legal process.³

II. THE LEGAL RULES GOVERNING THE MANX BAR

This section discusses the legal rules governing admission to the Manx Bar, in order to establish the basic framework for the discussion which follows. Accordingly, analysis is limited to a statement of the formal law. The issues raised by the legal rules are discussed in more depth in the two following sections.

Before 1763 the Manx courts were not served by a unified or regulated profession, although there is some evidence that a nonregulated group of persons prepared to act in another's cause existed.⁴ The first attempt at regulation was made in 1763, when an Act of Tynwald, the Manx legislature, noted:

Whereas much litigiousness and contentions are fomented and carried on by several ignorant and evil-minded persons, who provoke law-

2. See Peter W. Edge, *Doctrinal Effects of Smallness: The Authority of English Decisions on the Common Law in the Manx Courts*, N. IR. L.Q. (forthcoming).

3. Two caveats are in order. First, this Article does not deal with the nature of judgeship and the judicial process, or whether judges are intended to find the abstract law of their jurisdiction or interact in some more concrete way with the society of their jurisdiction. Second, this Article does not consider whether a separate legal and political identity for the Isle of Man is, in itself, desirable or undesirable. Rather, it attempts to describe the current state of that identity.

4. See WILLIAM CAMDEN, BRITANIA (1695), MANX SOCIETY 18, 16 at 24 and 117. In his deposition to the Commission of Inquiry (1792), MANX SOCIETY 31, 99, Attorney General Busk, who was not a member of the Manx Bar, described the proceedings of the courts before 1765 in unflattering terms:

"Jurisprudence was not attended to as an art, by a people little acquainted with any higher employment than that of steering a fishing-smack or turning the earth with a spade. Having no lawyers, the rustic sailors alone managed their own contests and those of their neighbours, and disputes thus rudely conducted, juries and judges almost as illiterate as the parties, terminated by a hasty decision with little regard to principles or forms."

Id.

suits and pretend to practise as Attornies therein, although altogether unqualified, to the great trouble and perplexity of the Courts . . . and also to the great inconveniency [sic] and detriment of the public.⁵

The Act then prohibited practicing as attorney in another's cause except by approved persons who had taken an appropriate oath, the Attorney General, or serving members of the House of Keys.⁶ The Act expired in 1768.

Permanent regulation began in 1777, when an Act of Tynwald, noting that "the custom of permitting persons not bred to the profession of the law to practice as attornies hath been found greatly to promote a spirit of litigation,"⁷ provided that only those commissioned by the Lieutenant-Governor, the principal officer of the Crown in the Isle of Man, could practice as an advocate in other's cause. The Lieutenant-Governor delegated consideration of individual commissions to one or more of the legal experts in the Isle of Man.⁸ The most important such officers were the Deemsters, distinctively Manx figures who owed as much to the Norse *lagman* as the English justice. The Deemsters were the custodians of the unwritten customary law of the Isle of Man, had a limited jurisdiction of their own, and sat as assessors on the principal courts of the Isle of Man, of which the Lieutenant-Governor was the sole judge. In the twentieth century the Deemsters have become the principal judges of the Isle of Man High Court of Judicature and the key legal officers of the Isle of Man. Less significant Manx legal officers such as the Attorney General, Clerk of the Rolls, and Judge of Appeal, are discussed as they arise in the text below.

In 1826 Tynwald further regulated entry to the, by now firmly established, legal profession.⁹ No one was to be admitted to the Bar who had

5. Attorney's Fees Act 1763 § 11.

6. The latter point needs some expansion. The House of Keys, as well as being a part of the Manx legislature, the Tynwald, also acted as an authority on Manx customary law when asked by the Deemster to assist him. Thus, it could be argued, they were already experts in Manx law, and requiring them to be licensed was foolish. It is worth noting as an aside that, before 1866, the House of Keys was in effect a self-perpetuating body representative of the principal Manx families. Thus, in the Isle of Man, the linkage between knowledge of law and political power was especially pronounced.

7. Attornies Act 1777, preamble.

8. Lieutenant-Governor to Liddell, Jan. 6, 1873 (Manx Museum Archives (hereafter M.M.A. GO 13/51).

9. Advocates Act 1826.

not served five years "clerkship," either at the Rolls Office or to a legally admitted advocate, or who was under twenty-two years of age.¹⁰ The Lieutenant-Governor was enjoined "to examine and inquire, by such ways and means as he may think proper, touching his fitness and capacity to act as an attorney."¹¹ Finally, it was provided that the 1826 Act was not to be considered as hindering the power of the Lieutenant-Governor to license an English barrister as an advocate.¹²

The 1826 Act has been subject to considerable amendment, addition, and repeal since it was enacted, but it does raise three legal issues which persisted in their importance: (a) Entry to, and the period of, clerkship or, in more modern terminology, articles; (b) Examinations of would-be advocates; and (c) Licensing of English barristers to practice at the Manx Bar. The issue of licensing is discussed in section IV below, but the first two issues may usefully be discussed before moving on to the Advocates Bill currently before Tynwald.¹³

A. Entry Requirements for Articles

For some time there was no legal limit on who could be offered articles. The first restriction on those starting articles was the Regulations of 1872, which are unsatisfactorily documented. A later set of Regulations, purporting to revoke them, indicates that they were issued on February 2, 1872, but correspondence from the issuing Lieutenant-Governor indicates that the correct date was May 2, 1872. In neither case is the Regulation entered in the Manx General Registry calendar, and the Regulation, while contained in the Manx General Reference Library's catalogue, is not to be found in their otherwise definitive collection of Manx Statutory Instruments, which includes documents of similar status, such as the Declaration of 1843 discussed below.¹⁴ Accordingly, the contents

10. Advocates Act 1826 §§ 1-2.

11. Advocates Act 1826 § 2.

12. Advocates Act 1826 § 8.

13. Also relevant to the Manx Bar, but not to this Article, are the Advocates (Disciplinary) Rules 1977, Advocates (Accounts) Rules 1977, Advocates (Disciplinary) Rules 1978, Regulations for Admission to Manx Bar (Amendment) Regulations 1980, Regulations for Admission to Manx Bar (Amendment) Regulations 1983, Advocates (Disciplinary) Rules 1987.

14. A number of documents are referred to throughout this text as Regulations, Rules, or Declarations. The easiest place to locate copies of these documents is the General Reference Library, Government House, Douglas, Isle of Man.

of this Regulation must be inferred from official correspondence concerning the duties of the Deemster under the new Regulations.¹⁵ It appears from this correspondence that the Lieutenant-Governor, unhappy with the examination of articled clerks, provided for written examination of students on general matters as well as on Manx law.

It thus appears that in 1872 a preliminary examination, aimed at ensuring an adequate level of “general attainment as well as legal proficiency” in articled clerks, was instigated.¹⁶ The detailed regulations of 1925 and thereafter make it clear that these preliminary examinations were to establish the suitability of the students to *begin* their articles, by assessing their general level of education.¹⁷ From 1925, at the latest, graduates and holders of some other formal academic qualifications were exempt from the preliminary examination.¹⁸ In 1944 English barristers were also exempted from the preliminary examination,¹⁹ and in 1957 this was extended to other qualified legal professionals.²⁰

In 1978 the preliminary examination was abolished, but it was replaced by legal restrictions on who could take articles. The 1978 Regulations limited articles to graduates; barristers of Northern Ireland, the Channel Islands, Ireland, and the United Kingdom; solicitors of the United Kingdom, Northern Ireland, and Ireland; holders of some *A* and *O* levels; and those others able to demonstrate equivalent educational attainment.²¹ In 1987 these rules were changed—barristers, advocates, and solicitors of the United Kingdom and Ireland were all entitled to take articles. More strikingly, the only others entitled were graduates who had completed a degree covering the core law topics, or who had added a CPE or equivalent to a first degree and then gone on to complete the academic stage of qualifying as an English solicitor or English barrister.²²

15. Lieutenant-Governor to Liddell, Jan. 6, 1873, Liddell to Lieutenant-Governor, Feb. 6, 1873 (M.M.A. GO 13/51).

16. See Lieutenant-Governor to Secretary of State, Nov. 29, 1873 (M.M.A. GO 13/89).

17. Admission to Manx Bar 1925, Admission to Manx Bar 1944, Admission to Manx Bar 1952, Admission to Manx Bar 1956, Admission to Manx Bar 1957, Admission to Manx Bar 1969.

18. Admission to Manx Bar 1925 and later codes as noted in the previous footnote.

19. Admission to Manx Bar 1944 and later codes.

20. See Admission to Manx Bar 1957 and later codes.

21. Regulations for Admission to the Manx Bar 1978.

22. Advocates Admission Regulations 1987, Advocates Admission (Amendment) Regulations 1989, Advocates Admission (Transitional Provisions) Regulations 1990.

B. Period of Clerkship

The 1826 Act laid down a period of five years' clerkship. This did not apply to English barristers, who the Lieutenant-Governor could admit at his discretion.²³ There is some evidence that, rather than allow English barristers to practice without clerkship, Lieutenant-Governors allowed a discount in the period. In 1826 Carrington, an English barrister,²⁴ petitioned over the refusal of Lieutenant-Governor Dawson to admit him to the Bar. He had served a three-year clerkship to Roper, a Manx advocate who had, for some of the period, not been in practice. The Lieutenant-Governor's only objection to his admission was a failure to complete a three-year clerkship to a practitioner, and he noted the contents of the 1826 Act. While he recognised he had a discretion in the matter, he suggested that the rules of the Act "may serve to show . . . that I have in this instance exercised the discretion . . . with a due regard to the respectability of the profession."²⁵

Thus, English barristers might expect to serve a reduced clerkship.²⁶ In 1874 a further Act of Tynwald reduced the period of clerkship for some graduates of Scots, Irish, and English Universities to three years only.²⁷

In 1983 the reduced period for English barristers was formalised, and extended to Northern Irish barristers, Irish counsel, Scots advocates, and United Kingdom and Irish solicitors. After 1983 all the above were required to serve two years' clerkship only.²⁸ In 1989, the Lieutenant-

As well as these formal qualifications, would-be advocates were to be interviewed on behalf of the governing body of the Isle of Man Law Society and had to prove persons of appropriate character and suitability.

23. Advocates Act 1826 § 8.

24. This is the only reading which makes sense of this case and is entirely consonant with the correspondence discussed below.

25. See Dawson to Smelt, Oct. 3, 1826 (M.M.A. GO 4/18). See also Dawson to Smelt, Nov. 5, 1825 (M.M.A. GO 4/18).

26. By 1930 the expected period for English barristers to serve had been reduced to two years. See Admission to Manx Bar 1930.

27. Advocates Act 1874 § 13. Since that date the range of degrees permitting reduced clerkship has been increased as the number of awarding institutions and relevant degrees, increased. See, e.g., Advocates Act 1956 § 2. The principle remained unchanged. In 1919 the Lieutenant-Governor was given a broad discretion to reduce the period of clerkship for individual ex-serviceman.

28. See Regulations for Admission to Manx Bar (Amendment) (No. 2) 1983, Advocates (Reduction in Period of Articles) Order 1983.

Governor reduced the period of articles for all clerks to two years.²⁹

C. *Entry Requirements for the Bar*

Mere clerkship was not sufficient to become an advocate. There is some evidence that, before 1828, the Lieutenant-Governor required some examination of the legal attainments of candidates for the Bar,³⁰ and the 1828 Act shows that examination of articled clerks before admission was required. It may be that these examinations were not especially stringent, however, as in 1843 the Lieutenant-Governor found it necessary to remind students that they would undergo “a strict examination and enquiry . . . as to their fitness and capacity.”³¹ These examinations were *viva voce* and carried out by the Deemsters and other legal officers of the Manx government.³²

In 1872 the Lieutenant-Governor, in the Regulations discussed at some length above, established preliminary, intermediate, and final examinations, all of which were to be in writing and set either by the Manx legal officers or suitable examiners.³³ The preliminary examinations have already been discussed.

The intermediate examinations consisted of two parts—outlines of Manx law, and bookkeeping.³⁴ Exemptions were available to the law part of the intermediate examinations—in 1957 this applied to legal professionals in the United Kingdom, Ireland, Northern Ireland, and the Channel Islands.³⁵ In 1978 the intermediate exemptions for law were abolished for all but English barristers,³⁶ and English barristers lost this

29. Advocates (Period of Articles) Order 1989.

30. See Lieutenant-Governor to Liddell, Jan. 6, 1873 (M.M.A. GO 13/51).

31. Notice, Mar. 2, 1843.

32. See Lieutenant-Governor to Liddell, Jan. 6, 1873 (M.M.A. GO 13/51).

33. See Lieutenant-Governor to Liddell, Jan. 6, 1873, Liddell to Lieutenant-Governor, Feb. 6, 1873 (M.M.A. GO 13/51); Lieutenant-Governor to Secretary of State, Nov. 29, 1873 (M.M.A. GO 13/89); Mills to Lieutenant-Governor, Oct. 20, 1873 (M.M.A. GO 21/96).

34. Admission to Manx Bar 1925, Admission to Manx Bar 1944, Admission to Manx Bar 1952, Admission to Manx Bar 1956, Admission to Manx Bar 1957, Admission to Manx Bar 1969, Admission to Manx Bar 1978. Exemptions were available for the bookkeeping examination, as well as the exemptions for law discussed in the text.

35. Admission to Manx Bar 1957 and later.

36. Admission to Manx Bar 1978.

benefit in 1983.³⁷

These class exemptions were never available for final examinations, which were restricted to legal issues, and in 1987 the distinction between intermediate and final examinations was replaced with a requirement that articulated clerks pass five "heads" of examination before being admitted to the Bar. A provision remains for exemption from particular examinations for particular students, but no class exemptions exist.

To summarise the current position, articles may only be offered to law graduates, or non-law graduates who have undertaken a CPE course, who have completed the English Legal Practice or Bar Finals courses; or to barristers, advocates, and solicitors of the United Kingdom or Ireland. The clerk then serves a period of two years articles, and passes five heads of examination on Manx law and bookkeeping.

D. The Advocates Bill 1993

In 1989, following the report of a Committee of Tynwald, the Lieutenant-Governor in Council appointed Sir Cecil Clothier, who had acted as a Judge of Appeal in the Isle of Man, to chair a commission to inquire into the law and practice concerning provision of legal services in the Isle of Man. This resulted in the Clothier Report.³⁸ The Report did not recommend radical changes in the rules governing the composition of the Manx Bar, although the role of Legal Practitioners was given greater emphasis. Legal Practitioners are lawyers qualified in other jurisdictions who, while not Manx advocates, provide legal services on the basis of this qualification. Since 1986 they have been subject to statutory regulation.³⁹

One consequence of the Clothier Report was the Advocates Bill, currently before Tynwald. Under the Bill,⁴⁰ issuing of advocates commissions or temporary licenses will become the duty of a Manx judicial

37. Regulations for Admission to Manx Bar (No. 2) 1983.

38. Report of the Commission of Inquiry into Legal Services, May 3, 1990. The findings of the Report are summarised by D.C. Doyle in his section of MARK SOLLY, *GOVERNMENT AND LAW IN THE ISLE OF MAN* (1994).

39. *See generally*, Legal Practitioners Act 1986, Legal Practitioners (UK Practitioners) Regulations 1986, Legal Practitioners (General) Regulations 1986, Legal Practitioners (General) Regulations 1992, Legal Practitioners (Application) Regulations 1992, Legal Practitioners (Prescribed Qualification) Regulations 1992.

40. The version of the Bill discussed here is the Advocates Bill 1993, as reprinted by authority to incorporate the amendments of the Select Committee.

officer rather than the Lieutenant-Governor.⁴¹ Admission to articles, the period of articles, and examination of articled clerks will remain unchanged,⁴² but a new route into the profession is provided through the legal practitioners. A legal practitioner will not be required to serve a period of articles if he has practiced as a legal practitioner for a set period, and for a set period, which may not be less than two years, has been employed by an advocate or supervised by an advocate as prescribed. The regulations providing the details of the legal practitioner route are not yet available, but it seems that this provides persons qualified in another jurisdiction, who wish to draw on that expertise for themselves while learning Manx law, with an alternative to clerkship. The route is sufficiently unattractive compared with simple articles as to pose little danger that those planning to become Manx advocates at the start of their legal career will prefer becoming Manx legal practitioners to taking articles.

III. THE MANX BAR AS A SOURCE OF LAWMAKERS⁴³

Judicial officers have a vital role to play in the lawmaking process. At the most formal, judicial officers can create legal rules binding upon future judges by the doctrine of *stare decisis*. More realistically, any discussion of legal principle, especially by a distinguished judicial officer, is especially valuable, at least partly due to scarcity, in a very small jurisdiction. The Bar has attained a curious balance—a virtual monopoly over appointment to permanent judicial posts and relative exclusion from temporary posts, which are often filled by English barristers.

41. Advocates Bill 1993 cl. 15.

42. Advocates Bill 1993 cl. 16, 18(3) which retains the Regulations of 1987 discussed above.

43. The discussion which follows does not consider the role of the Judicial Committee of the Privy Council, the ultimate appellate court for the Isle of Man, in making Manx law. Relatively few cases actually reach that level, and the Judicial Committee has never been regarded as a distinctively Manx body, unlike the High Court and the Staff of Government, whose membership is discussed in this section. For a general discussion of the doctrinal importance of the Judicial Committee see Peter W. Edge, *Decisions of the Judicial Committee of the Privy Council in Other Jurisdictions—A Note on the Limits of Stare Decisis in Commonwealth Jurisdictions*, COMMONWEALTH L. BULL. (forthcoming).

A. *The Permanent Judicial Officers of the Isle of Man*⁴⁴

The most important Manx legal officers were the Deemsters and the Attorney General.⁴⁵ The Attorney General has been included in this discussion, although he had no judicial role to fulfil, as he was a key figure in the Manx legal system, whose opinion was often sought on matters of considerable legal and constitutional import, and who possessed responsibilities and rights in the area of criminal prosecutions.

The first point to make is the interrelationship between the posts. The First Deemster, to all extents and purposes the most senior Manx judicial officer, had generally served a period as the Second Deemster.⁴⁶ After 1816 all First Deemsters had judicial, or Attorney Gubernatorial, experience before appointment. Of these twenty First Deemsters, seventeen were previously Second Deemsters. It would appear that the constitutional practice was to elevate the incumbent Second Deemster to the senior post upon a vacancy.⁴⁷

Turning to Second Deemsters, before 1921 Second Deemsters lacked previous judicial experiences. Between 1921 and 1947 all five appointees had served as Acting or Deputy Deemster before their appointments. Sydney James Kneale, appointed in 1947, was the first Second Deemster to enter the post via the office of Attorney General. After 1974 three of the four Second Deemsters were Attornies General, and it may be that a constitutional practice is emerging whereby the Attorney General is to be

44. The raw data upon which this section is based is taken from *Liber Juramentorum*, available for consultation in the Manx General Registry, Government Offices, Douglas, Isle of Man.

45. When Governor Atholl acted as judge of the Chancery Court, "throughout the whole time the Court was occupied, his Grace evinced a discernment and knowledge of the more regular modes of the English Courts of law, and we trust he will endeavour to modify the many irregularities here." See *MONA'S HERALD*, Nov. 10, 1824. This was very much the exception to the Governor's normal role.

46. Between 1777 and 1793 a single Deemster was in office, thus reducing judicial opportunities for his successors. It should be noted that there are only ever two permanent Deemsters—the First and Second Deemsters.

47. The two exceptions to this in the last century are explicable by exceptional circumstances. James Gell had held the post of Attorney General for thirty-two years when appointed First Deemster, and he had written authoritatively on a wide range of legal topics. George Edgar Moore was appointed on the same day as the new Second Deemster, Robert Kinley Eason, and it would thus appear that the previous Second Deemster, Bruce Whyte M'Pherson, was unable or unwilling to retain his old post, let alone accept elevation.

favourably considered for the vacant post of Second Deemster.

No Attorney General was appointed after holding a Manx judicial post. It thus appears that, generally, there was a hierarchy of appointments. The First Deemster would have served as Attorney General or, more commonly, Second Deemster, before taking office. The Second Deemster may well have served either as Attorney General or as a temporary officer. In both cases these important judicial officers were exposed to the arguments and culture of the Manx Bar before taking their post, thus mitigating the significance of their own background should they not be members of the Manx Bar before appointment.

In fact, mitigation was not needed. The most significant feature in the appointments of the Manx judiciary was the reliance upon a pool of qualified Manx advocates. We will consider the officers in reverse hierarchical order—Attorney General, then Deemsters.

The first two Attornies General appointed after 1777 were English lawyers rather than Manx advocates. After 1844 all Attornies General were members of the Manx Bar. Charles Richard Ogden, appointed in 1844, did not become an advocate until after his appointment. The later incumbents were all Manx advocates before appointment, for an average of 22.5 years.⁴⁸ It would appear from the available data that before 1866 the Attorney General was appointed from outside the Manx Bar while, after that date, it was a post held by very experienced members of the Manx Bar.

Turning to the Deemsters, we have already established that the First Deemster normally served as Second Deemster for a time. Accordingly, discussion may centre on appointees to the latter post. After 1794, only two of the twenty-five Second Deemsters were not members of the Manx Bar.⁴⁹ Turning to the time of call before appointment, there does appear to have been a slight change after 1900. Of those appointed before 1900, the average time of call was 19.1 years.⁵⁰ After 1900, the average was 30.6 years.⁵¹ It would appear from this data that the usual practice was to appoint extremely experienced members of the Manx Bar to the post of Second, and thence First, Deemster.

As well as these principal, interrelated, officers, before 1918 there

48. With a minima of eighteen and a maxima of thirty-two years.

49. These were William Drinkwater, 1847-1855, and Stevenson Stewart Moore, 1900-1905.

50. With a minima of seven and a maxima of twenty-seven years.

51. With a minima of twenty-two and a maxima of thirty-eight years.

existed a separate Clerk of the Rolls. Amongst other duties, the Clerk of the Rolls could advise the Lieutenant-Governor on the laws where it was inappropriate that a particular Deemster act—for instance, where an appeal from that Deemster was being heard. In 1918 the posts of Clerk of the Rolls and First Deemster were merged, the gap in the judicial roster having been filled by a Judge of Appeal, as discussed below.⁵² The Clerk of the Rolls often had experience of other judicial posts—although four had no prior experience, three had been Deemsters, and two had been Attornies General—although no clear pattern of appointment can be discerned. The linkage of the Clerk of the Rolls to the Bar is, however, clear. Of the Clerks of the Rolls appointed after 1777 only one was not a Manx advocate, and the average period of call for those who were advocates was 24.4 years.⁵³ Thus, the Clerk of the Rolls was as immersed in the Manx Bar as the Deemsters.

Official correspondence also indicates that Manx judicial figures were seen as being drawn appropriately from the Manx Bar. In 1814, for instance, an unsuccessful applicant to the Bar petitioned against the decision of the Lieutenant-Governor. One of the reasons given for the rejection was that:

it [has not been usual] to admit to the Manx Bar persons who are not natives of the Island; for as the Deemsters . . . are selected from the Bar, and as their proceedings in their Courts are generally in the Manx language, it has been customary to consider the Bar as a school for preparing fit persons to fit the office of Deemster.⁵⁴

In 1816, the Lieutenant-Governor suggested, unsuccessfully, that “the senior practitioner of the Manx Bar” be appointed to the vacant post of Attorney General.⁵⁵ But in 1818, in relation to a vacancy as Deemster, the Lieutenant-Governor ensured, after being informed that the British Government intended to appoint an English barrister, that a named Manx

52. See Isle of Man Judicature Act 1883 §§ 5, 32; Judicature Amendment Act 1918 §§ 2-6, 9; High Court Act 1991 §§ 2-3.

53. With a minima of four years and a maxima of fifty-two years.

54. Lieutenant-Governor Smelt to Beckett, Feb. 19, 1814 (M.M.A. GO 2/8). The Lieutenant-Governor also recognised the benefits which increased competition might bring to the Manx Bar. See also Mills to Lieutenant-Governor, Oct. 23, 1822 (M.M.A. GO 3/41); Lord Bishop of Sodor and Man to Lieutenant-Governor, Dec. 25, 1821 (M.M.A. GO 3/40).

55. Lieutenant-Governor Smelt to Lord Sidmouth, July 25, 1886 (Letterbooks 2, 189).

advocate be appointed in line with the ancient practice of filling up vacancies from the Manx Bar.⁵⁶

Perhaps most strikingly, in 1854 the Manx Bar complained, as a body, at the planned appointment to the Bench of "a Gentleman from the Bar of England who, however otherwise qualified, was wholly unacquainted with the practice of the Courts of this Island and a stranger to its laws and customs."

While admitting that the Home Office could appoint whomsoever it wished, the Bar noted that in Ireland the practice was to appoint from the local bar, and that they had claims to elevation. Lord Palmerston thought there was justice in their representation and that Manxmen were to be appointed to fill later vacancies.⁵⁷ Further to this idea that the Bar had a corporate interest in vacancies in Manx judicial posts, in 1882 Attorney General Gell wrote:

the Bar of the Island has a limited sphere of action—and there are not many offices to be looked at by way of promotion. It is an incentive to the thorough study of the law that there be some prizes to which Members of the Bar may with laudable ambition aspire.⁵⁸

The importance of the Manx Bar in providing *permanent* judicial officers has been established, but judicial officers could also be appointed on a temporary or ad hoc basis.

B. Temporary and Ad Hoc Manx Judicial Officers

As well as the permanent officers, English barristers, or more rarely Manx advocates, could be temporarily appointed to hear cases, or carry out the duties of the Attorney General. In this section we consider the growth in the role of the Acting Deemster and the background of the persons appointed to the position.

56. Lieutenant-Governor Smelt to Lord Sidmouth, May 14, 1818 (Letterbooks 3, 21). *See also* Lieutenant-Governor Smelt to Lord Sidmouth, Mar. 1, 1819 (Letterbooks 3, 42); Lieutenant-Governor Smelt to Lord Sidmouth, Oct. 5, 1818 (Letterbooks 3, 27); Hobhouse to Lieutenant-Governor Smelt, Dec. 4, 1818 (Letterbooks 3, 32).

57. *See* P.R.O.—H.O. 45/O.S. 5362.

58. Attorney General Gell to Lieutenant-Governor, Nov. 25, 1882 (Letterbooks 37, 601).

Table 1: Acting Judicial Officers 1765-1993

Period	Deemster	Clerk of Rolls	Attorney General	Total
1765-1800	1	0	2	3
1801-1850	0	4	3	7
1851-1900	4	12	2	18
1901-1919	2	6	0	8
1920-1939	19	na	0	19
1940-1959	7	na	0	7
1960-1979	6	na	0	6
1980-1993	68	na	0	68

Considering these statistics, the most important development in the twentieth century has been in the use of Acting Deemsters. Useful information can be gained from the commissions of the Acting Deemsters and comparison of these commissions with the roll of advocates.

Before 1963 all appointments were expressly justified by the circumstances making a temporary appointment necessary. For instance, there would be a conflict of interest if the Deemster were to act,⁵⁹ or the Deemster were to be incapacitated by absence,⁶⁰ illness,⁶¹ or death.⁶² There is some, admittedly slender, evidence that the Lieutenant-Governor, who issued the commission, regarded some explanation, no matter how vague, as important. In 1900 H.G. Shee was appointed in relation to the notorious Dumbell trials because the Deemster sought to be relieved "for

59. See Commission of R.B. Moore (1936). See also R.B. Moore (1923), where the appointment was justified because both Deemsters "when practicing advocates advised in relation to the matter in dispute between the parties."

60. See Commission of H.R. Gelling (1944).

61. See Commission of R.B. Moore (1923).

62. See Commission of G.E. Moore (1963).

reasons satisfactory to me.”⁶³

After 1963 there was a change in approach. Reasons for the appointment were generally, but not invariably, given.⁶⁴ When given, the reasons were the same as those earlier in the century. In both this period and earlier in the century, commissions were generally limited to a particular case and ancillary matters, except where the appointment was to cover an incapacity, where the commission was for a particular duration or session of the court. After 1991, the commissions were mainly for a period of months—either generally, or to serve in particular courts. Reasons ceased to be given in the commission.

It cannot be proven that the change in the style of commissions reflects a change in the substance of commissioning—it may simply indicate a change in the practice of the clerk drafting the commissions.⁶⁵ Nonetheless, it can be said that the demise of express reasons for the commission and the broadening of the effect of commission indicate a reduction in the need to defend and define temporary commissions.⁶⁶ From an exceptional mechanism which must be limited and justified, the Acting Deemster has become a more integral part of the Manx legal system. The figures in Table One, above, seem to provide limited support for this finding.⁶⁷

Given the increased importance of the Acting Deemster, it is useful to consider how far those appointed were importations to the Manx legal system and how far they were already actors in the legal system, temporarily elevated to a new status.

63. For a background of this, see CONNERY CHAPPELL, *THE DUMBELL AFFAIR* (1910) (M.M.A.).

64. See Commission of J.M. Davies (1966).

65. The latter point received some support from the records. The *Book of Commissions* started a new volume in 1991, and there is a definite change in the mode of commission in the new book.

66. The change also reduces the extent to which the commissions themselves can be analysed in detail. Compare the analysis of the commissions in this section with the analysis of licenses to act as a temporary advocate discussed in section IV, *infra*.

67. That is not the only reading of the figures as, as is discussed below, the Manx legal system underwent some exceptional crises during this period as a result of local scandals.

Table 2: Acting Deemsters 1900-1993

Date	Manx Judge	Manx Advocate	Other	Total
1900-1909	0	0	1	1
1910-1919	0	1	0	1
1920-1929	3	5	1	9
1930-1939	3	5	2	10
1940-1949	0	1	1	2
1950-1959	4	1	0	5
1960-1969	1	1	2	4
1970-1979	1	0	1	2
1980-1989	3	0	20	23
1990	9	10	26	45

To a large extent these figures speak for themselves. Commissions have increased vastly since 1980. Throughout the eighties, the majority of these commissions were issued to English barristers, often to Queen's Counsel. After 1990 the majority of commissions were still issued to English barristers, but members of the Manx Bar also began to be commissioned to hear cases.⁶⁸ Thus, the Acting Deemster's increase in importance reflects an increased role for English lawyers in the Manx legal system.

It is difficult to determine from the commissions exactly when they would be given—partly because of the omission of reasons from later commissions and partly from the change in commissions from case-by-case to period-of-time. There is some evidence that advocates would be

68. See *Manx Lawyer to be a Deemster for a Day*, MANX INDEPENDENT, Sept. 6, 1991; *Sixth Interim Report of the Advocates Fees Committee* (Douglas) (1989).

preferred for appointment for set times (thirty-seven commissions, twenty before 1991) over barristers (twenty commissions, three before 1991). It may be surmised, therefore, that English barristers were being imported because of the characteristics of the individual cases they heard. It is difficult to be more precise in this study, but it should be noted that the Lieutenant-Governor was also responsible for issuing temporary licenses to practice as an advocate, which were definitely granted on the basis of the special characteristics of the case. Taking this as an analog, Acting Deemsters may well have been appointed where a conflict of interest prevented a Deemster hearing a case, the case would have been so demanding as to effectively prevent a Deemster carrying out his other duties, or the case required special judicial expertise. Given the status of Manx advocates as general practitioners with their own permanent clientele, analogous to a solicitor in England, they may be unsuitable for the two latter cases but would seem as capable of dealing with a conflict of interests as a temporary incapacity or vacancy. The increase in temporary commissions issued to Manx advocates may indicate a change in policy, favouring Manx advocates where they are suitable for the needs of the case.

Another important judicial officer is the Judge of Appeal. We have already seen how in 1918 the position of Clerk of the Rolls was merged with that of First Deemster and their role in the appellate process taken by the Judge of Appeal. While not a temporary officer per se, the Judge of Appeal functioned in the Isle of Man on an ad hoc basis, coming to the Island during the period of their commission only when required to by a case. Thus, they may fairly be discussed in this section.

By law, the Judge of Appeal was required to be a Queen's Counsel and thus, an English barrister.⁶⁹ The seventeen Judges of Appeal appointed constitute, therefore, an obvious route for English influences to enter Manx law. To a certain extent, however, their influence could be ameliorated by the structure of the Manx appellate courts. Since 1921 the Manx appellate courts have consisted of a Deemster and a Judge of Appeal—in case of a failure to agree, the Deemster decides which judgement is to be taken as the judgement of the court. Effectively, therefore, the Deemster can overrule the Judge of Appeal.

69. This is a slight oversimplification, as it is now clear that the Crown could make a Manx advocate Queen's Counsel.

C. Conclusion

By the mid-nineteenth century the requirement that a Deemster or Attorney General be drawn from the Manx Bar was well established. During the twentieth century the role of nonadvocates in the Manx judiciary increased—initially with the creation of the Judge of Appeal, and later with the practice of appointing English barristers to act as temporary Deemsters. While the authority of the Judge of Appeal could be tempered by the Deemster, who could effectively exclude the Judge of Appeal from the judgement, this did not apply to Acting Deemsters who either sat alone or might sit in the Appeal Court with a Judge of Appeal.

While it is fair to say that the role of the Bar in providing permanent judicial officers has become more established, the rise of temporary judicial officers appointed from outside the English Bar has served to reduce the importance of the Manx Bar in some instances. It is to be expected, however, that when a case is being heard by one or more English barristers, they would rely more heavily upon counsel to explain and detail Manx law. It is the composition of counsel which we consider in the next section.

IV. THE MANX BAR AS A SOURCE OF LAWMAKING

As well as providing a pool for appointment of the Judicial officers most obviously involved in making law, the Manx Bar carries out two other roles in lawmaking and quasi-lawmaking. First, in an adversarial system, the arguments of counsel inform those responsible for actually making law. Second, in a small, intimate bar, there exists the possibility of consensus lawmaking between legal professionals. If counsel for the plaintiff and counsel for the defendant both believe the law on a given point to be settled beyond reasonable likelihood of reversal, then neither are likely to raise the issue in court and allow it to be settled by more formal lawmaking processes. This sort of transaction can have especial weight in a small bar where counsel interact closely and, to some extent, rely upon one another for legal information. Two examples can illustrate this. First, in 1978 W. Twining and J. Uglow noted that “in practise it is felt that most advocates keep their own notebooks and rely on their own and their colleagues’ memories [of Manx cases],”⁷⁰ and this is a view

70. W. Twining & J. Uglow, *Legal Literature in the Isle of Man* (1978) (Un-

supported by four out of nineteen respondents to the 1993 questionnaire discussed below, who indicated that they learnt of unreported Manx cases from other advocates. It seems improbable that advocates would inform one another of the mere existence and facts of a case without some interpretation of its meaning and significance. Second, a common strategy for successfully passing the Manx Bar examinations is to locate a recently qualified advocate, photocopy their notes on Manx law, and update and add to them during articles. The author has been told of, but not had sight of, second and third-generation Manx law notes. The views of practicing Manx advocates can thus form part of Manx legal education.

It is submitted that three, non-doctrinal, factors help determine the importance of English law in the Isle of Man: First, the educational background of advocates; Second, the textual resources available to, and consulted by, advocates when seeking to determine points of law; and Third, the role of legal professionals qualified in other jurisdictions.

It seemed clear to this author that traditional legal and historical sources would not adequately address these issues. Accordingly, this author sought to determine, by postal questionnaire, the use of legal materials in the jurisdiction. Due to the relatively small size of the population, it was decided to attempt a census, rather than survey or pilot study, of the Manx Bar.

The Advocates Directory for October 1993 listed sixty-eight practicing advocates, organised in twenty firms. Thirty-two questionnaires were returned by individuals, and eleven of the twenty firms completed a firm questionnaire. The profile of the returning advocates was slightly different from that of the Bar as a whole. Female advocates constituted only 20.58% of the practicing Bar but returned 28.12% of the questionnaires.⁷¹ Also, while the average date of call for the practicing Bar was January 1982, the average date of call for those returning questionnaires was May 1983. While it seems improbable, given the size of the Bar, that these differences are very significant, it is worth noting that the questionnaires did tend to be returned by relatively recently called advocates, and this may distort the results. We will now turn to the three factors men-

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71. This Article does not address issues of gender and ethnicity within the Manx Bar. It may be worth noting as an aside, however, that the first woman to practice in a Manx court appears to have been Rose Heilbron, Q.C., who was licensed for a single case in 1964. The first female advocate appears to have been Clare Harper, who was called in 1973. At the time of the 1993 study, there were fourteen female advocates, nine of whom returned a questionnaire.

tioned at the start of this section.

A. *The Education of Advocates in 1993*

It is useful at this point to summarise and discuss the legal rules detailed in section II. Admission to articles changed from no regulation at all, through preliminary examination of general level of education, to the current posture, which effectively requires at least four years of education outside of the Isle of Man (i.e., three years for a law degree and a further year for professional qualification). The formal requirements of admission to the Manx Bar have thus required more and more formal education, much of which is unavailable in the Isle of Man. Further, the formal requirements have linked the Manx legal profession quite explicitly to legal education in England and Wales.

Since 1828 the period of clerkship has reduced considerably, and there has been increased recognition of the value of prior education, whether in another legal profession or at university, to the articulated clerk. Three points need bringing out. Firstly, throughout this period the requirements for entry to articles have increased—to a very large extent, therefore, the overall reduction in the length of articles in 1989 must be viewed in the context of increasingly high entry requirements, rather than a straightforward reduction in the period of study expected of applicants to the Manx Bar. Secondly, in order to gain the reduction in period of articles, education outside the Isle of Man is required. Finally, exemptions from examinations for the Manx Bar have reduced, until today, no class exemptions are available.

Thus, it seems that the utility of legal education and experience outside the Manx jurisdiction is no longer considered good reason for providing exemption from examinations for knowledge of Manx law and legal practice. I have suggested elsewhere the importance of English law in developing a professional identity for the Manx Bar.⁷² Within a profession whose special status derived, at least in part, from learning, qualification in English law or some other academic discipline was rewarded by exemption from some examinations and a reduction in the period of articles.

However, given a body where a greater proportion of the Manx Bar

72. See Peter W. Edge, *Doctrinal Effects of Smallness: The Authority of English Decisions on the Common Law in the Manx Courts*, *supra* note 2.

had such qualifications, the special value was deflated—where everyone is assumed to have knowledge of English law, special status flows from knowledge of Manx law. Thus, the advantages to be gained by those qualified in other jurisdictions have, effectively, disappeared at the same time as the level of education in English law has increased. Today, articulated clerks must have completed an extensive programme of study of English law—a study which does not exempt them from passing examinations in Manx law.⁷³ To gain a more detailed view of their education, advocates were asked what formal qualifications they held other than Manx advocate.⁷⁴

Of the respondents, twenty-four, or seventy-five percent, of them were graduates, of which eighteen were graduates of law from English universities, one from a Scots university, and one from a Commonwealth university. The remaining four respondents were nonlaw graduates of English universities, one of whom had taken a Diploma in Law conversion course. Thus, the Manx Bar seems firmly established as a graduate profession.

Turning to qualifications in other legal professions, eight of the respondents, or twenty-five percent, had successfully undertaken some form of vocational legal education in England. Five were barristers, two were solicitors, and one had completed the Law Society's final course. Given the period of articles, there has not yet been time for the requirements of English vocational training to filter fully into the Manx Bar, although it is worth noting that at least one respondent who, given his date of call, almost certainly must have undertaken some vocational training, did not note it when asked. Nonetheless, it does seem that a substantial minority, but a minority nonetheless, of the Manx Bar are qualified in England, and none of them are qualified in other jurisdictions.

It would thus appear to have been confirmed by this survey that the permanent Manx Bar has become immersed in English legal education. Given the current rules governing admission to articles, this is a trend which can only increase as older advocates retire and are replaced by newly qualified advocates conforming to the new rules.

73. One conclusion from this line of reasoning may be that, in future, we will see a revulsion in use of English authorities by Manx advocates. After all, citing English law is not especially meritorious where all advocates know about it—unearthing and deploying a Manx authority may be.

74. Notary Public has also been excluded from consideration, although it was not expressly done in the questionnaire.

B. Textual Resources Available to Manx Advocates

The first source of data on the resources available to Manx advocates on a day-to-day basis was a questionnaire on the resources retained by individual firms. This does not give a complete picture, however, as shared resources are available, although less immediately, at the Law Society Library, Attorney General's Library, General Reference Library, and Manx Museum. The firm questionnaire was supported, therefore, by questioning individual advocates on the estimated frequency of their uses of legal materials.

The firm questionnaire simply sought to determine what legal materials individual firms retained in their stock. This questionnaire was kept as basic as possible, as it seemed probable to this author that, in all but the very largest firms, responsibility for sources would either be diffused between all legal practitioners in the firm or lie with one advocate in addition to their normal duties. In neither case would a detailed questionnaire, such as a law librarian may be happy to complete and return, be received very favorably. Of the twenty firms in practice, eleven returned questionnaires. Originally, it was intended to divide firm results into single practitioner, small, medium, and large firms. Given the returns, this was not practical without violating the promised confidentiality, so firms have been divided into single practitioners and other firms.

The most common materials kept by sole practitioners were English law textbooks and the Manx Statutes (six of six—100%). Next most common were the *Manx Law Bulletin* and miscellaneous non-Manx materials (five of six—83.33%), followed closely by the *Manx Law Reports* and textbooks on Manx law (four of six—66.66%), then *Halsbury's Laws of England* (three of six—50%), unreported Manx cases (two of six—33.33%), and a single practitioner who subscribed to *Current Law* (one of six—16.66%).

The larger firms were, as one would expect, better equipped than the sole practitioner. All firms subscribed to *Halsbury's Laws of England*, had English law textbooks, Manx statutes, *Manx Law Reports*, the *Manx Law Bulletin*, and textbooks on Manx law (five of five—100%). The majority also had specialist law reports, and miscellaneous non-Manx materials (four of five—80%). The *Law Reports* and unreported Manx cases were also common (three of five—60%). A minority of firms possessed Scots law textbooks (two of five—40%), *Current Law* or *Halsbury's Statutes of England* (one of five—20%).

The individual questionnaires confirm the importance of English

legal materials in the opinion-forming of Manx advocates. The advocates were asked to estimate how often they made use of a number of categories of materials, a rating of one indicating very frequent use, a rating of five, very infrequent or never. Obviously there are serious weaknesses in this self-assessment, and the figures that follow might usefully be considered as provisional until the activities of a selection of the Manx Bar are more accurately logged.

Table 3: Frequency of Material Use by Manx Advocates

Material	Frequency
Manx Statutes	1.19
English Law Textbooks	1.72
Halsbury's Laws of England	2.00
Manx Law Reports	2.00
Manx Law Bulletin	2.44
The Law Reports	2.84
Other, non-Manx Materials	3.16
Specialist Law Reports	3.69
Halsbury's Statutes of England	3.78
Unreported Manx Cases	3.97
Current Law	4.03
Textbooks on Manx Law	4.06
Current Law Statutes Annotated	4.75
Scots Law Textbooks	4.84

The significance of English legal materials to advocates in their daily practice seems clear. English textbooks and *Halsbury's Laws of England*, were referred to more commonly than actual sources of Manx law, such as the cases reported in the *Manx Law Reports* and the *Manx Law Bulletin*. Given the shortage of useful Manx legal texts, reflected in their low frequency of use, such reliance upon English secondary sources is perhaps inevitable. But this is not to underplay the importance of such reliance. Where the structured writings of English lawyers are such an important resource for the Manx Bar, it seems inevitable that solutions to legal problems within the Manx jurisdiction will be framed on English lines.

C. Licensing of English Barristers to Serve as Temporary Advocates

In addition to permanent advocates, practitioners from other legal jurisdictions could be temporarily licensed to practice by the Lieutenant-Governor. The Advocates Act 1826 Section 8 simply refers to his licensing an English barrister to practice as an advocate.⁷⁵ As has been noted above, this could be used to give English barristers special conditions of entry to the Manx Bar. It also appears to have formed the basis for temporary licensing of English barristers. In 1969, in a set of regulations principally concerned with examinations for candidates seeking admission, the power of the Lieutenant-Governor to license English barristers in exceptional circumstances was recognised.⁷⁶ Specific regulations in 1988 and 1990 laid out a formal procedure to follow when seeking such a license.⁷⁷

In 1991, in a directive which must be regarded as of no legal force but of very great practical force, the Lieutenant-Governor detailed the "very exceptional circumstances" which would normally be followed before licensing an English barrister to practice. These criteria, which seem to reflect accurately the exercise of the licensing power, were: (a) No Manx advocate is available; (b) There would be a conflict of interest if a Manx advocate acted; (c) An unusual kind of expertise not readily available on the Island is required; or (d) The case is estimated to be so lengthy that unreasonable demands would be made on the resources of

75. The Advocates Act 1976 §§ 7, 9 add little to this.

76. Admission to Manx Bar 1969.

77. Directions Regarding the Licensing of English Barrister to Appear in Manx Courts 1988, 1990.

the Manx legal profession if no license were granted.⁷⁸

The Advocates Bill, which has been discussed above, will cause some changes to the law in this area and turn some of the patterns of practice into law. Given its basis in the 1828 Act, legal professionals other than English barristers could not be licensed, although other areas of the law recognised the value of their qualifications. Under the Bill, members of the Scots, English, or Northern Ireland Bar will be able to apply for a temporary license so long as they are of at least ten years standing with full rights of audience in their jurisdiction.⁷⁹ The criteria for granting a license are basically those of 1991 stated above, but the Bill makes it clear that the license is to be issued for specific proceedings before a court, tribunal, commission, or committee of inquiry in the Isle of Man.⁸⁰

These legal rules are relatively uninformative—principally because it is an area which had been left to the Lieutenant-Governor's bare discretion. More is to be gained by considering the actual licenses granted to practice. First, to show the increased importance of the acting advocate, here are some figures.

Table 4: Advocates and Temporary Licensees 1777-1993⁸¹

Date	Advocate	Licensee
1777-1800	18	0
1801-1824	46	0
1825-1848	40	0

78. Directions Regarding the Licensing of English Barristers to Appear in Manx Courts, 1991.

79. Advocates Bill 1993 cl. 17. The range of acceptable licensed advocates can be increased by statutory instrument. *See also* cl. 18. As the number of English solicitors with extensive experience in court work increases, it may be that we will see an extension of the license to English solicitors.

80. Advocates Bill 1993 cl. 17(3).

81. The absence of licensees before the twentieth century may represent a more informal system of licensing. It is improbable that licenses were common during this period, however, as the *Book of Oaths* does not contain many non-Manx names, or qualifications such as Q.C. or barrister, which can be found in the *Book of Oaths* in later periods as confirmation of the *Book of Commissions*.

Date	Advocate	Licensee
1849-1872	32	0
1873-1896	35	0
1897-1920	26	1
1921-1944	21	1
1945-1968	21	3
1969+	78	133

Even taking into consideration the increase in the size of the Manx Bar, which is indicated by the increase in the number of articulated clerks admitted to the Manx Bar each year, the rise in the number of licenses issued is startling. The details of these licenses merit description.

First, the bulk of the licenses, 106 of 138, were issued for appearance before the Manx courts. A further thirty-one were issued for appearance before a Commission of Inquiry, either the Summerland Fire Commission, or the Savings and Investment Bank Inquiry, both of which are discussed below. Only one commission was granted for appearance before a tribunal, actually a National Health Service Tribunal.

Second, the licenses were always limited licenses to practice, tied to a particular case, set of related cases, or inquiry. The broadest licenses issued were similar to that issued to M.C. Fields in 1988 who was commissioned: "To act on behalf of the Attorney General and the Chief Constable in any criminal proceedings arising out of the report of the Inspectors appointed by the High Court to investigate the affairs of the Saving and Investment Bank Limited." These were extremely rare, and the single-case or bundle-of-cases licenses were in the overwhelming majority.

Third, some of the earlier licenses required the barrister to practice with a Manx advocate. This was in vogue only briefly—it was not imposed in the sole licenses of 1919 or 1930, it was imposed on the sole license of 1965 and on all the Summerland Commission licenses in 1973, but not thereafter.

Fourth, the overwhelming majority, 106 licenses, were issued in relation to civil cases. Of the licenses issued regarding criminal cases, six were issued to prosecutors and twenty-six to defenders.

Finally, licenses congregated around nexuses. Of the 138 licenses, twenty-two were issued concerning the investigation of the Summerland Fire Commission into a fire in a Manx leisure complex which caused many deaths, and at least thirty-three were issued around the failure of the Savings and Investment Bank—the principal scandal of the Manx financial sector this century. Of the remaining licenses, only eighteen were issued to English barristers working alone on a case—the remaining sixty-five were issued to barristers to either act as co-counsel with another licensed barrister, or to oppose a licensed barrister.⁸²

It would appear from the legal rules governing granting of licenses, the 1991 Directive issued by the Lieutenant-Governor and what can be gathered from the licenses themselves, that the Manx Bar has become a “general practice bar,” where permanent advocates are liable to be displaced in controversial, long, intricate or, it may be inferred, financially very important cases in favour of specialists from the English Bar. The current rash of temporary licenses may reflect no more than a unique crisis, caused by two *cause celebres* requiring specialist legal knowledge of a sort which, realistically, such a small jurisdiction cannot be expected to have instantly available. On the other hand, given the growing importance of the financial sector in the Isle of Man, it may be that the temporary advocate—the specialist consultant—will become a permanent fixture of the Manx legal system. Alternatively, we may find that local expertise will develop, driving out English specialists from practicing in Manx courts. In the latter case, the temporary advocate may serve to indicate in what areas demand for legal services in the Isle of Man is growing beyond the available supply and act as a signal for Manx advocates to move into those areas.

V. CONCLUSIONS

After a period of some flux, the profession of Manx advocate is now established as the only route by which a permanent right of audience in the Manx courts can be achieved. Manx advocates deal with the bulk of the work of the Manx courts and provide the recruitment pool for the permanent judicial officers of the Manx High Court. In that sense, the

82. These figures must all be approximate, with the SIB-related actions being particularly underrated, as they are based solely on the contents of the *Book of Oaths* and the *Book of Commissions*, rather than on research into each case to plot the relations between them.

separate identity of the Manx Bar is well established.

But the role of the Manx Bar in lawmaking is being eroded. We have seen how the rise in use of Acting Deemsters has reduced the impact of the Manx Bar on the personnel of the court, although this reduction may in itself be ameliorated if the trend to appoint Manx advocates as Acting Deemsters continues. It is impossible to see how an English barrister, flown into the Isle of Man to hear a particular case, could draw fully upon a distinctively Manx jurisprudence or legal culture. More controversially, if the Isle of Man really is a separate political entity, how far can an imported judicial officer represent its interests and desires?

As crucially, the role of the Manx advocate in making law is itself under threat. Even when the case is being heard by a Manx Deemster, the adversarial system would appear to put the onus on counsel to propose and support distinctively Manx solutions to legal problems. It is difficult to see how an acting advocate, no matter how skilled in the development of English legal doctrine in their specialist area, can be expected to fulfil this role. Where the acting advocates themselves appear before English barristers acting as Manx judicial officers, the role of the courts in producing Manx law, rather than applying and developing English law, must be open to doubt. Even if there was developing an extended Manx legal culture, where particular barristers developed a specialism of appearing before Manx courts in addition to their other activities, it is unlikely their knowledge and immersion could equal that of the full-time, resident, Manx advocate.

It is easy to overplay the role of the Acting Deemster and acting advocate in the Manx legal system. There are numerous indications that they are imported to deal with specialist cases where no local expertise is available and, it would seem likely, no distinctively Manx approach has been formulated. In the day-to-day running of the Manx legal system, what I referred to above as the "general practitioner" role, the Manx advocate functions alone.

But if legal advice, and legal doctrine, in most cases, is formulated by a native legal practitioner, it is not free of English influences. Rather, as we have seen, the education and resourcing of the Manx Bar make it almost inevitable that the English approach to any legal matter will be taken as the default within the Manx jurisdiction. The knowledge that a case may eventually be heard by an Acting Deemster or argued by an acting advocate would seem to do nothing to ameliorate the effect.

It would thus appear, from consideration of the Manx Bar and Manx judiciary, that the separate identity of the Manx legal system may be in

the process of becoming a matter of form rather than substance.

I will conclude by bringing out some of the issues which make study of the Manx legal profession of more general academic importance.

First, the small size of the jurisdiction makes relatively extensive study relatively cheap. Low-cost research is not necessarily good research, but it does at least carry within it the possibility to be good research—a possibility which more expensive projects have only if necessary funding can be found.

Second, the small size of the jurisdiction makes it possible to aim at a certain level of completeness in a study of this sort. This Article has discussed all Deemsters, Attornies General, advocates, and acting advocates of the jurisdiction after 1777. It would be relatively easy to work from a list of every person who has appeared before a Manx court on another's behalf and examine in more detail the process of litigation, formulation of legal doctrine, and representation in the Isle of Man.

Third, and more speculatively, if the legal systems of the member states of the European Union are converging, then the experience of the Manx Bar in relating to its larger neighbour may be of some relevance to the English legal profession of the future.