

## **History of the High Court at Allahabad during the Chief Justiceship of Sir Walter Morgan (1866-1871)**

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### **The Letters Patent of the High Court of Judicature of the North-Western Provinces**

**(17th March 1866)**

By the High Courts Act, 1861, provision was made, not only for the replacement of the Supreme Courts of Calcutta, Madras and Bombay and for the establishment of High Courts in their places, but for the establishment of High Court by Letters Patent in any other part of Her Majesty's territories not already included in the jurisdiction of another High Court. The Calcutta High Court itself was established, in the place of the Supreme court, by Letters Patent of the 14th May, 1862. Four years later the High Court of Judicature for the North-Western Provinces came into existence under Letters Patent of the 17th March 1866, replacing the old Sudder Diwanny Adawlat.<sup>1</sup> These Letters Patent as subsequently amended, are the Charter of the present High Court of Judicature at Allahabad.

### **The first Chief Justice and Judges Of the New High Court**

The first Chief Justice and judges of the new High Court of the North-Western provinces were named in its Letters Patent. They were—Sir Walter Morgan, Barrister-at-Law, Chief Justice; Alexander Ross, Bengal Civil Service; William Roberts, Bengal Civil Service; Francis Boyle Pearson, Bengal Civil Service; and Charles Arthur Turner, barrister-at-Law, judges. Of these, the four Bengal Civil Service Judges were the four judges of the existing Sudder Diwanny Adawlat of the North-Western Provinces. Robert Sapnkie acted as an officiating judge from the beginning, until he was made a permanent judge of the High Court in 1867, in the place of Mr. Justice Edwards.

#### **Sir, Walter Morgan**

Sir Walter Morgan was born in the year 1821 and was, therefore, forty-five when he became the first Chief Justice of the court. He was the son of Walter Morgan and was educated at King's College, London. He was called to the Bar by the Middle Temple on the 18th November 1841: for some years he practiced as a conveyancer and "equity draughtsman." He also went on the South Wales Circuit and attended the Galmorganshire Sessions. On the 2nd July, 1852, he was admitted to the Bar of the Supreme Court in Calcutta and in 1854 was appointed clerk of the Legislative council of India. He served in that capacity until 1859, when he became a master in equity to the Supreme Court in Calcutta. In 1861 he published with Mr. A. G. Macpherson,<sup>2</sup> a book on the Indian Penal Code with Notes. In 1862 Sir Walter Morgan was appointed one of the first Puisne Judges of the new Calcutta High Court, and, in due course, became the first Chief Justice of the North-Western Provinces, as mentioned above, by appointment under the Letters Patent of 1866. He remained Chief Justice of Justice of the North-Western provinces until November, 1871, when he was translated to Madras as Chief Justice of that Court, finally retiring from Madras in 1879. In 1849 Sir Walter Morgan married Ada Maria, The daughter of Mr. D. Harris. She died in 1884. There is, however, no trace of her having been in Allahabad, while Sir Walter Morgan was Chief Justice. Sir Walter Morgan died in London on the 28th October 1906, at the age of 85. He had one son, also Walter Morgan, who became Deputy Registrar of the appellate side of the Madras High court in 1892.

#### **Mr. Justice Turner**

Mr. Justice Turner was the first barrister judge appointed to the new High Court direct from England. He was the son of the Revd. John Fisher Turner and was born at Exeter on the 6th March, 1833. He was educated at Exeter Grammar School and at Exeter College, Oxford, of which he became a fellow in 1855. He was called to the Bar by Lincoln's Inn in 1858. He was, therefore, of only eight years standing at the Bar when appointed to the High Court and was only thirty-three years of age. He remained a Judge of this High Court for over twelve years, until in January, 1879 he succeeded his old Chief Justice, Sir Walter Morgan, as Chief Justice of Madras. The new High Court of North-Western Provinces thus had the distinction of providing two successive Chief Justices of Madras from its original bench within the first thirteen years of its existence. It is evident from the files of the Pioneer that Mr. Justice Turner, being much the youngest of the Judges, took a leading part in the activities of Allahabad outside the Court and, before ceasing to be Chief Justice of Madras in 1885, he had in 1880 become Vice-Chancellor of Madras University. Sir Charles Turner was in 1879, the year he left the Allahabad High Court, a member of the Indian Law Commission and in 1886 he was a member, with Sir Charles Aitchison, of the Public Service Commission appointed to examine the conditions under which Indians should be admitted to the higher posts of the public service. In 1888 he became a member of the Council of India and retained that office until 1898. He lived in London at No. 62, Ennismore Gardens until he died on the 20th October, 1907 at the age of 74. He was awarded a C. I. E. in January, 1878 and a K. C. I. E. in 1879 on becoming Chief Justice of Madras.

### **Supersession of the Sudder Diwanny Adawlat By the High Court on the 11th June, 1866**

The actual first appointments of the Chief Justice and Judges of the new High Court dated from the 13th June, 1866, on which day the old Sudder Diwanny Adawlat came to an end. Though in 1857-58, Lord Canning, at the time of the Indian mutiny, had assumed the government of the North-Western Provinces at Allahabad, where it remained until it move to Lucknow, The Sudder Diwanny Adawlat still sat in 1866 at

<sup>1</sup> The Sudder Diwanny Adawlat had been constituted for the North-Western Provinces under Regulation VI 1831.

<sup>2</sup> Mr. A.G. Macpherson later became one of the first Judges of the Calcutta High Court.

the old capital at Agra. Though the Suder Diwanny Adawlat ceased to exist and the High Court formally replaced it on the 13th June, 1866, it was not for another three years that the transfer of the new High Court to Allahabad was complete. It is a great pity that the first volume of the new Law Reports of the High Court does not contain any reference to the inauguration of the Court. And there are unfortunately no records in the archives of the High Court of the actual transition, except a copy of an official memorial by the Sudder Judges of their thanks presented to the 'Register' (Registrar), Mr. J. Simson, of the Bengal Civil Service, on the 7th June, 1866, "a few days" before the old Court ceased to exist. This was, no doubt, a well-earned testimonial, since much of the organization of the change over must have fallen on the 'Register's' shoulders.

### **Court First established at Agra**

Mr. Simson became the first "Registrar" of the High Court and so remained until he went on leave to Europe in March, 1867. Meanwhile, the Court remained at Agra. Its last reported case was a special appeal (Mashook Aley Khan and others V. Nowl. Decisions, S. D. A. N. W. P. January to May, 1866, p. 159) decided by Mr. W. Roberts and F.B. Pearson\* on the 31st May, 1866. The first reported case of the new High Court, decided by Mr. Justice Pearson and Mr. Justice Spankie, was heard on the 18th June, 1866. Both were uninteresting. The principal difficulty in the way of the transfer to Allahabad was, it seems, the housing of the new High Court, and its Judges.<sup>3</sup>

### **The new High Court building at Allahabad**

But the building of the new High Court and of the new government offices, which are those excellent red rectangular two storied buildings still to be seen in Queens Road, was proceeding. The four blocks were designed by Colonel Peile, of the Public Works Department, the two on the west of Queens Road as the Government Secretariat and the Accountant General's office respectively, and those on the east as the High court and the Board of Revenue. They are said to have cost thirteen lakhs, which by modern standards appears exceedingly cheap. The old 'Gazetteer' of the North-Western Provinces relates that the new High court was completed about 1870. It, or part of it, was, however, in all probability fit for occupation rather earlier than that as Mr. Justice Pearson and Mr. Justice Turner had by November, 1868 arrived in Allahabad from Agra and were sitting here as a Bench of the new High Court. The court was, accordingly, in the third year of its existence divided between Agra and Allahabad, the Chief Justice and three Judges sitting at Agra and two Judges at Allahabad. This led to a somewhat bitter leading Article in the 'Pioneer' of the 23rd November, 1868, complaining of the disadvantage to litigants and lawyers of a divided Court, even suggesting that the Chief Justice might be too comfortably housed at Agra to wish the hasten his move. The house occupied by Sir Walter Morgan at Agra on Drummond Road, near the District Courts, is believed to be the house known as 'Grant's Castle', which still stands and is a palatial house in large grounds now the property of the younger brother of the Raja of Avagrah. The original court-room of the first Chief Justice of the High Court is believed to have been the present court-room of the District Judge of Agra, which is by no means spacious or well lit. Nor, apparently, was the new High Court building at Allahabad itself at first and unqualified success, since its designer had considered that it did not befit the dignity of its appointments to equip it with punkhas. A system, therefore, of pumping air (presumably by hand) from the cellar had been devised, without, it seems, the expected result of cooling the building. It was said at the time by the wits of the Bar that the only thing wrong with the new High Court building was that it was impossible either to hear or see in it. But even so it compared favourably with the new Calcutta High Court which was opened in 1872 and about which even more unpleasant things were said.

### **The full High Court assembled at Allahabad late in 1869**

When exactly the Court first assembled at full strength in Allahabad it is difficult to say. But the Chief Justice was sitting in Allahabad in the autumn of 1869. It seems probable, therefore, that the full High Court did not actually get into its stride at Allahabad until late in the year 1869, after it had been in existence for over three years, though part of it had been sitting here since 1868.

### **Retirement of Mr. Justice Edwards in March, 1867**

Mr. Justice Edwards had a very short career in his new office as a Judge of the High court. He was on leave from March till December, 1866, and sat for less than three months in 1867, proceeding again on leave preparatory to resigning from the Bengal Civil Service in March, 1867. In his place Robert Spankie became a permanent Judge on the 7th May, 1867. His was, therefore, the first appointment, other than those nominated by the Letters Patent. Incidentally, the Judges in those days received salaries of Rs. 3, 750 a month, while the Chief Justice's salary was Rs. 5, 000 a month. At the time these salaries were fixed there was no income-tax in India.

### **Death of Mr. Justice Roberts.**

### **Retirement of Mr. Justice Ross**

The second casualty among the original Judges of the High Court occurred on the 27th January, 1870, when Mr. Justice Roberts died in the South of France at Hyeres, having left Allahabad in ill-health in August, 1869. Mr. Justice Ross sat for the last time in the Court on the 15th April, 1871, before retiring to England. Thus by the spring of 1871, three out of the original five Judges of the Court had disappeared.

### **The Allahabad Bar**

\* The Judges of the Sudder Diwanny Adawlat were not "Justices," which perhaps accounts for the difficulty which the official services still find in according to Judges of the High Court their proper titles of 'Mr. Justice.'

<sup>3</sup> The four large houses in Hastings Road, Allahabad, which have generally been occupied by Judges of the High Court are believed to have been built about this time and to be copies, on a rather larger scale, of the house occupied by on the Judges of the Sudder Diwanny Adawlat at Agra, now occupied by the District Judge of Agra.

By this time the Allahabad Bar was beginning to get into its stride and possessed many European Barristers, who had been admitted as Advocates of the Court, and a growing number of Indian Pleaders. Simultaneously with the formation of the new High Court, rules had been made, dated the 16th June, 1866, which provided, among other things, that all Advocates and Vakils, who were entitled to appear in the Court of the Sudder Diwanny Adawlat, should, on application within three months from that date, be admitted to be enrolled and to plead in the High Court of the North-Western Provinces. As far as can be traced, there were at the time of the move to Allahabad six Advocates on the roll of the High Court: Messrs. Pritchard, Pittar, Warner, Smith, Thomas and Arathoon. But this grew rapidly, and by the end of 1871 new admissions had brought the number of Advocates up to twenty. The increase in the volume and value of the work of the High Court is demonstrated by the continuous stream of Advocates who sought admission, and, by the middle of 1877, over fifty Advocates had been enrolled, including three Indians.<sup>4</sup>

#### **William Jardine, first Government Advocate**

In 1869 or 1870, Mr. William Jardine was appointed the first government Advocate of the North-Western Provinces. He came from England with, it is understood, greater mathematical than legal qualifications, a circumstance which gave rise to some comment at the time of his appointment. But he overcame these criticisms; and so far as can be gathered from such reports of his addresses to the court as have survived and from his active share in the legal life of the Province, he was a man of energy and was a courageous and able advocate.<sup>5</sup>

#### **Mr. G.E. Knox, C.S.**

There is one interesting reference on the 28th January, 1871 to a criminal case before Mr. J. W. Shearer, the then Sessions Judge of Allahabad, in which the Crown was represented by the Government Advocate and "Mr. Knox, C. S.". This was the embryo of Sir George Knox, nineteen years later to become one of the Court's most celebrated Judges, who, ripe in years, retired from the Bench in 1921. He had arrived in India in 1865 and his appearance in 1871 in the High Court proves an active association with it at least from 1871 to 1921, a period of fifty years, which is a record unlikely every to be broken. We shall be able to follow Sir George Knox's notable career when we come to it. At this early date he was an officiating magistrate and collector; but is not easy to understand in what capacity he was appearing "with" the Government Advocate. It was not as Legal Remembrancer, a position which he did not fill till 1885. It is, however, believed to have been customary for a Legal Remembrancer to appear whenever he liked in those days both in civil and in criminal cases. When it was stopped is not know; but it occurred in comparatively recent times when Sir Edward Bennet, afterwards himself a Judge of the High Court, appeared before Mr. Justice Pullan and was, I am told, duly reproved.

#### **The early 'Vakil' Bar and its celebrities<sup>6</sup>**

The new High Court on its establishment not only took over the judicial work of the abolished Sudder Diwanny Adawlat, but, as mentioned above, it also took over the Vakil Bar of the older Court. Therewas to be a period of transition during which the Urdu speaking Vakil Bar was to be changed into an English speaking Vakil Bar, and its enrolment under a Sanad issued by the Judges of the Sudder Diwanny Adawlat was to be replaced by enrolment under an examination conducted by the new High Court. During this period of transition, which went on up to the time of Sir Robert Stuart's Chief Justiceship, the Urdu Speaking Vakils often made speeches in the High Court in Urdu and their addresses were interpreted to the Court in English by their English knowing Juniors at the Bar. The undoubted leader of the Urdu speaking Vakils was Maulvi Haider Hussain of Jaunpur. He amassed a great fortune at the Bar at Agra and at Allahabad, and founded a legal family in these Provinces, which, after him, was represented in the High Court by his son, Nawab Abdul Majid, and by his grandson, Nawab Sir Mohammad Yusuf, Bar-at-Law, both of whom greatly distinguished themselves in the Muslim politics of India. Maulvi Haider Hussain was followed as the leader of the Vakils by Munshi Hanuman Prasad, of Banares, who was essentially an Urdu speaking Vakil of the Sudder Diwanny Adawlat, but was sufficiently young at the time of the change to acquire a smattering of English by self study and to be able to express himself in broken English in Court. He too established a great reputation at the Bar and founded a legal family which has produced distinguished lawyers both at Banares and at Allahabad. One of his grandsons, Mr. Justice Gokul Prasad, after a distinguished career at the Bar, became a Judge of the High Court and his family is still represented at the Allahabad Bar by his grandson Munshi Ambika Prasad and great grandson Shri Ganesh Prasad. Following Munshi Hanuman Prasad, were a band of young Vakils drawn from all over the Province who had received the highest English education which was then available in the Anglo-Vernacular Schools established by the Government. The leaders of this group were Pandit Ajudhia Nath, Pandit Bishambhar Nath and Munshi Jwala Prasad. The last named in 1872 became the junior Government Pleader. He was distinguished son of Munshi Man Rai, a Great Sudder Diwanny Adawlat lawyer of the earlier days at Agra, who had himself been Government Pleader at Agra in the old Sudder days. But he died young. Pandit Ajudhia Nath and Pandit Bishambhar Nath made great reputations for themselves both in law and in politics and at one time were household names in these Provinces within the memory of men now living. The former was a great Sanskrit and Arabic scholar and

<sup>4</sup> Sayyid Muhammad Mahmud, enrolled on the 13<sup>th</sup> December 1872; Kishori Mohan Chaterji, enrolled on the 28<sup>th</sup> January 1875; and Manphul Surajbal Pandit enrolled on the 23<sup>rd</sup> February 1877.

<sup>5</sup> The Jardine family had a close connectin with India. William Jardine, the first Government Advocate of the North Western Provinces was possibly a younger brother of John Jardine, a member of the Bombay Civil Service, who after a distinguished career during which he was for a time Judicial Commissioner of Burma and Recorder of Rangoon besides being Secretary to the Commission which tried the Gaekwar of Baroda in 1875, finally in 1885 became a Judge of the Bombay High Court. William Jardine left a son, who was a member of the Indian Civil Service and became the Resident at Gwalior Before retiring. William Jardine lived in Allahabad in the house at the crossing of the Katra Road and the University Road, which now belongs to Lala Ram Narain Lal the bookseller.

<sup>6</sup> Contributed by Mr. (lately Mr. Justice) S.K. Dar

was almost unrivalled in India as an Urdu orator. He was referred to by Sir John Edge on a public occasion as the equal of Sir John Russel, the famous English lawyer. Pandit Ajudhia Nath is now represented in the High Court by his son, Pandit Gopi Nath Kunzru, the younger brother of Dr. Hirday Nath Kunzru. Pandit Bishambhar Nath was a fine specimen of the old culture. He was one of the first twelve Indians to study English in the Delhi College before the Indian mutiny, another being the grandfather of the Rt. Hon'ble Sir Tej Bahadur Sapru, at the time a teacher of Mathematics. Pandit Bishambhar Nath died at Allahabad in 1907. He was a Persian and Urdu scholar and a fluent English speaker. Shortly before his death, he came out of his retirement at the insistence of an old client to argue his case in the High court. A grandson of Pandit Bishambhar nath, Pandit Prithvi nath, lived in Allahabad; and an Advocate of the, Mr. Madanmohan Nath Raina, was married to one of his grand-daughters. These veterans were the leading members of the Vakil Bar, which, later on, came from the Universities and a continuous line exists today. To them belongs the honour of running the first race with English Advocates and of establishing the reputation and traditions of the Vakil Bar. Of the English Advocates of the Court at this time, probably the most celebrated were Mr. W. M. (later sir Walter) Covin<sup>7</sup>, who was enrolled the 9th December, 1872 and Mr. T. Conlan who was enrolled on the 4th November 1873.

### **Quarrels at the Bar and Legal Education**

Messrs. Goodall and Newton, two barrister advocates of the Court, in 1870, came to loggerheads with each other in a domestic defamation suit which eventually came to be tried by the subordinate judge of Allahabad. It arose out of an anonymous defamatory letter concerning his professional colleague said to have been circulated by Goodall among local officials, including the Judges and Registrar of the High Court, and sundry subordinate judges and officials of the Province. Mr. Goodall defended himself in a sensational case by denying successfully that he had written the letter at all and, therefore, its authorship remains a mystery. Mr. Newton was, however, very soon afterwards suspended from practice for five years for alleged unprofessional conduct in what was probably the first case of its kind in the High Court. But he eventually appealed to the Privy Council, which reversed the decision of the High court and reinstated him in 1872. It is recorded that Mr. Newton on a certain Thursday in 1872 appeared in the High Court and presented the Order of Her Majesty in Council, whereupon he was reinstated<sup>8</sup>. In these days there was, it seems, much competition at the Bar, both professional and unprofessional. The Bar was sharply divided between the Barristers and the Vakils. Legal education was provided through the medium of law classes under the control of the Court itself. But, though Allahabad University was in 1870 only in process of being established and no University law school existed, the colleges of the North Western Provinces had been affiliated to Calcutta University. From at least the year 1870 onwards Calcutta University turned out graduates both in arts and in law, and many of these found their way into the courts of these Provinces. But legal education within the Provinces themselves, such as it was, was only by means of the law class, directed by the High Court, of which Mr. Justice Turner appears to have been the principal patron, as he seems to have been of most other legal activities of the time. A pleadership examination was held at irregular intervals under his auspices, and we have a record of one such examination in May, 1871, at which fifteen candidates sat to be examined in English, Hindu and Mohammadan Law, of whom eight were successful, three with credit.

### **A chapter of accidents in early Criminal Procedure**

It may be interesting to notice an early criminal appeal of some celebrity which came before a Full Bench of the High Court in January, 1870, consisting of the Chief Justice and Ross, Turner and Spankie, JJ. Nye Singh had been tried and sentenced to transportation for life on the 27th August, 1868 by the Assistant Commissioner of Kumaon in respect of an offence committed before the Indian Penal Code came into force. In revision a Division bench of the High Court, consisting of Turner and Spankie, JJ. , were divided in opinion, the former declaring for a new trial, the latter for upholding the conviction and sentence. By a curious process, Mr. Justice Spankie, who was the junior of the two Judges, in a pencil note scribbled on a scrap of envelope, wrote "Division of opinion, lay before a third Judge". In due course, the case came before Mr. Justice Pearson, who agreed with Mr. Justice Spankie. The Point had been overlooked, however, that there was then no provision, as there is now, for laying a case before a third judge in the event of an equal division of opinion on a Division Bench. The Letters Patent of the Court at that time provided that the opinion of the Senior Judge should prevail, that is to say, in this case, the opinion of Mr. Justice Turner. The convict, therefore, applied to the High Court (probably in revision) for a retrial in accordance with Mr. Justice Turner's opinion. This application was, in due course, heard by a Full Bench of the four available Judges of the Court. But the Full Bench was itself equally divided, the Chief Justice and Mr. Justice Turner declaring for the new trial on the one hand, and Mr. Justice Ross and Mr. Justice Spankie, on the other hand, being for upholding the conviction. This left a most distressing position in which the unfortunate convict's case had admittedly been dealt with in a manner not provided for by the Letters Patent, but in which a majority of the High Court could not be prevailed upon to say so. In the end the conviction stood (there being no majority of the Court willing to set it aside), with a strong hint by the Court itself that the best thing that could happen in the interests of all parties would be that the prisoner should receive a free pardon. Whether he was fortunate enough to be pardoned is unknown. But the case may be fairly described as an early chapter of accidents in criminal

<sup>7</sup> Walter Mytton Colvin was the youngest son the Hon'ble Mr. J.R. Colvin, BCS, Lieutenant-Governor of the North Western Provinces who died in the Fort at Agra in 1857. He enjoyed a leading practice at the Allahabad Bar, and in 1892 was appointed a member of the North West Provinces Legislative Council. He was a Fellow of Allahabad University and was knighted in 1904 for his services on the commission appointed to inquire into police administration.

<sup>8</sup> Mr. Newton acquired, or re-acquired, a large practice in the North Western Provinces and the Punjab; but he died soon after this in 1875. He was the advocate of the Begum Sumroo in her Arms suit against the Government and at the time of his death was engaged in the suit of Raja Rumben Singh, which until a recent suit in Bengal, was the Indian 'Tichbourne case'. But Mr. Newton left behind him a son, Ernest Augustus Newton, who came out to India in 1860, joined his father's office in Allahabad and was enrolled as a Pleader of this Court in 1874. The practiced in Allahabad, but later went to Dehra Dun, where he became Government Pleader and acquired a large practice. In 1883 he moved to Meerut, where he was still practicing in 1908. He was a well known Freemason. (The Cyclopaedia of India, vol. II p.231).

procedure. Other criminal appeals in 1870 included a case of suttee from Jaunpur, in which the High Court had occasion to observe that it was the second case within a short time and that it was, therefore, necessary to be severe. The lady's sons and other villagers received sentences of three years' imprisonment for assisting her.

### **The "Dullals"**

To revert again to the troubles at the Bar, all was not well, as, both among the Vakils and the Advocates the pernicious practice of 'touting' was much in evidence even at this early stage. There was class of professional touts, who infested the railway station and the precincts of the Courts. An attempt was made, much to their credit, by some of the Vakils themselves to have this traffic stopped. The practice was for this class of parasites, who were called "dullals" but masqueraded as "mookhitiars", to introduce clients to Vakils, and even to Advocates, in consideration of a 'chaharum' amounting to one-fourth of the ultimate fee. The early attempts to stop it were not very successful, as the majority of the Vakils, while condemning 'dullals' as such, found it difficult to distinguish them from the genuine 'mookhtiar' whom they professed to regard as a useful class of unofficial solicitor, acting between the client and the Pleader. But it bore fruit soon afterwards, and, after a commendable address by the Bar to the high Court condemning the abuses of the 'dullals' and asking for assistance, the Bar itself in 1871 formed an "Advocates Association". Pledged to suppress malpractices of this kind, which must be taken as the embryo of the Bar Council of today.

### **Exploitation of Litigants**

In other respects, also, the new bar was in some ways not in a very healthy condition in 1870. Fees were very high and that there was considerable exploitation in the Province of the litigant public by Vakils and Barristers alike can hardly be doubted. There were complaints on all hands of extravagant fees and of the high cost of litigation. The 'Englishman' writing from Calcutta said openly that the law courts were the weakest point in the administration, and that litigation had reduced to poverty more than half the old families in the country. Money-lenders and lawyers thrived, and there had already come into existence a system of 'law suit gambling' which had led to obvious abuses among the legal profession. This was not confined to the lower strata of Pleaders and, from what can be gathered from contemporary reports, as often as not lawyers were remunerated by results. Lord Cornwallis had a long time before, on the 11th February, 1793 (Parlt. Papers 1810 and 109), written a minute which showed that the administration of justice in India was hampered by the absence of a properly organized legal profession. Suitors either appeared in the person, or appointed unorganized Vakils or Pleaders or their own servants and Pairokars to appear for them. The persons who practiced as Vakils were at that very early date often of low character and had no reputation to lose by misconduct. They took bribes and, if directed in misconduct in one court, they moved to another. They were ignorant of Hindu and Mohomedan law, as well as English law. When the servants of suitors appeared to plead their masters' causes, matters were even worse. To remedy this a certain number of Vakils had been licensed at the end of the eighteenth or the beginning of the nineteenth century, who were to have a monopoly of practice in the courts. They were to take on oath to execute their duties properly, rules were to be made as to their gratification and provision was made for their education at the Mohamadan College at Calcutta and at the hindu College at Benares<sup>9</sup>. There was, therefore, a background of disorganization which had no doubt resulted in a good deal of malpractice, which gave rise to the strictures passed on the legal profession of those days. These comparisons of early history cannot but provoke the reflection that reform in India is slow for it would be hard to deny that, over the intervening space of seventy years too little has been done by stricter practice, by the proper staffing of Courts, by the insistence on a uniformly high standard of professional practice and conduct, and by the discouragement of all speculative litigation, to protect the public from the descendants of the 'dullals' and cheap lawyers. But that there had also quickly developed a great body of most honourable and able professional men is certain, to whom, like those who presented an address to the High Court in 1871, these things were, and are, anathema. But the progeny of the 'dullal' proved unhappily difficult to exterminate. It is interesting, also, to see how the controversies and debates, which we hear today, were not new even in 1870. There were the same old contentions as there are now, as to the relative merits of the professional and the unprofessional judge, and also as to the advantages of a separate judicial service, all of which only goes to show that public opinion is, or so far has been, a poor match for bureaucracy in India.

At this date, and until about 1923, a Criminal Session was of course, held by the High Court at Allahabad for the trial of European British subjects.<sup>10</sup> In 1870 the Criminal Session yielded such interesting crimes as the theft of a case of sherry by a certain William Hutt, a guard, at Moghal Serai, for which he was duly sentenced to nine months' imprisonment, and the "criminal misappropriation" by William Thomas at Jubulpore of a bedstead- what a very awkward thing criminally to misappropriate- for which he duly received six months.

### **The Long Vacation**

The long vacation of the High court from its inception started in the beginning of September, and so remained until it was altered in May 1933. It has a duration of only six weeks now and is known as Summer vacation.

<sup>9</sup> See Holdworth's History of English Law, Vol. XI, p.219.

<sup>10</sup> It was in 1883 that public opinion in India was deeply stirred, on the introduction of the criminal Jurisdiction Bill by the Opposition to the proposals made to remove the race disability imposed on native magistrates by Chapter 33 of the Code of Criminal Procedure against exercising criminal jurisdiction over European British subjects. The subject was hotly debated in Parliament, the Opposition being led by Sir James Stephen. But Lord Ripon, the Viceroy, eventually succeeded in getting the Bill through in a modified form which gave power of trial of Europeans only to Indian District Magistrates and Sessions Judges and allowed Europeans to require to be tried by a Jury of which at least half should be Europeans or Americans.

## **Mr. J. D. Sandford**

In November 1870, Mr. J. D. Standford became the Registrar of the High court. But he remained as Registrar for less than a year as in 1871 he was appointed the first Judicial Commissioner of British Burma, an office which he filled with great distinction for many years.

## **Appointment of Sir Walter Morgan As Chief Justice of Madras**

In the spring of 1870, the Chief Justice took leave to England. On Saturday, the 20th march, 1870, the Indian Vakils of the High Court headed by Moulvee Hyder Hossain, whom we have mentioned before as the leader of the Vakil Bar, attended His Lordship's Chamber and presented him with a moving farewell address in which they commended his "untiring patience" and his consideration for the "native Bar". The Chief Justice in his reply held out the prospect- a prospect before long to be fulfilled\_ of the "highest judicial offices" being filled by Indians, and concluded by saying:

"Gentlemen, you could not pay me a higher compliment than by saying"- at which point the reporter claims to have observed tears trickling down the Judicial cheeks-"that I looked upon you all with an equal eye. I am taking leave of you for six months only".

Sir Walter Morgan was a simple man, who disliked ceremony. During his absence, Mr. Justice Turner acted as Chief Justice.

The Chief Justice returned to Allahabad in November 1870 and remained in office as Chief Justice for a year longer. There are perhaps two incidents of 1871 which are worth recording. During the year the famous Law member, Mr. Fitz James Stephen, paid a visit to Allahabad, where in the middle of his many other preoccupations over the Penal Code, the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act, he found time to deliver a speech on the "Permanent Settlement" then a subject much in debate. The other incident does not concern Allahabad, but Patna, where the Wahabees were about to be tried. To defend them no less eminent a person than Sergeant Ballantyne of Old Bailey fame from England had been instructed, and he was announced to pass through Allahabad on Saturday, the 29th April, 1871. He never came, however, and what had happened to him was for a time something of a local mystery. But the not uninteresting explanation was that Sergeant Ballantyne never left England, since early in may 1871 he was to be found in London opening the case for the claimant before Chief Justice Bovill in the famous Tichbourne case<sup>11</sup>.

On the 4th September, 1871, the appointment of Sir Walter Morgan was announced as the Chief Justice of Madras in succession to Sir Colley Scotland, and simultaneously the appointment of Mr. Robert Stuart, Q. C. of the Chancery Bar, as the new Chief Justice of the High Court of the North Western Provinces at Allahabad. The new Chief Justice was given by the press at least, a cold and critical reception, as he was thought not to be of such legal distinction as to merit so high an appointment as the Chief Justiceship of Allahabad, which was described in the 'Pioneer' as the fourth highest judicial appointment in the British Empire. He arrived in allahabad with Lady Stuart in November and was sworn in on the 22nd, Sir Walter Morgan leaving for Madras on the same day. Though there was no display of emotion and no ceremonial leave taking of the retiring Chief Justice, it is clear that his departure was universally regretted. He had successfully accomplished the difficult task of creating a new High Court, and had raised the tone of the judicial service and the strength of the local bar, of both branches of which he held the confidence. He did not perhaps, leave behind him a judicial reputation to equal that of Sir Barnes Peacock, who was almost his contemporary in Calcutta. But he scarcely had the same opportunities for doing so. Nevertheless, he was spoken of within living memory as a distinguished Judge.

If there is anything to complain of in the stewardship of Sir Walter Morgan, it must be that he has left behind him so few traces of himself. But that was apparently his character.<sup>12</sup>

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<sup>11</sup> Sergeant Ballantyne in fact came to India four years later to defend the Gaekwar of Baroda before the commission appointed by Lord Northbrook to enquire into the charges made against him by Colonel Sir Arthur Phayre, the Resident at the Court of Baroda, of an attempt to murder him by administering arsenic and diamond dust. In the result the commission was divided in opinion.

<sup>12</sup> For a great deal of the material concerning the old Vakil Bar and its members I am indebted to the knowledge and courtesy of the Rt. Hon'ble Sir Tej Bahadur Sapru.