Mr. Justice Mahmood

By SRI GUR DAYAL SRIVASTAVA,

Advocate, High Court, Allahabad

In building the legal process in India the fact that the Indian Judges borrowed from foreign precedents and traditions may readily be admitted, but what they said in their pronouncements was not a mere echo of the foreign precedents nor the off spring of the latter. The judicial precedents of the Indian Judges are not the deposit of any one particular system; they are more liken to a mosaic of mingled shades and influences. The implantation of English Common law through statutes and codes into a polity so fundamentally different in bent and ethos from that of the Anglo Saxons was indeed a perilous experiment and if it was successful, it was so because of the reconciling influence of the' Indian Judges. The task before the Indian Judges was by no means easy. The personal and the customary laws in India with vast gaps and inter spaces in them could not be retained in the form they were and the process of codification naturally increased the influence of Common law. Not in an inconsiderable measure the codification secured uniformity in the administration of justice but that alone could little fulfill the great ends of the rule of law. The need of the time seemed to be for the enlargement of the body of Common law doctrines with new faith and principles which were entirely alien from the former and held so sacred by the inhabitants of the Indian soil. But could the system emerging from this fusion work successfully merely by the application of isolated rules of Common law strung together by slender threads of foreign precedents. It needed something more and that was the determination of a path around which the living oracles of law could move in new conditions. That the English Judges could have built that path alone; is an assumption rather gratuitous and perhaps an expression of the wonted belief of those who have not probed deeper into the reality. The truth is, it was largely, if not wholly, the work of the Indian Judges. The legal system in India in the form of statutes and codes is undoubtedly the bequest of the foreigners, for which we shall ever remember them with gratitude; but to have enabled such a legal system to rest on enduring foundations by discovering broader principles and distinctions and separating the essentials of jurisprudence from its historical and geographical accidents is mainly the achievement of the Indian Judges. It were they who accomplished the unison of Common law with Indian customs and beliefs without breaking the intrinsic unity of either or destroying their own heritage and for their talent and erudition they may ever remain the envy of the ablest on the Woolsack, nay, the ablest in any judiciary. Of the distinguished Judges who had a share in this work, one was Mahmood.

Perhaps no one lives today to convey his reminiscences of Mr. Justice Mahmood and we can only think of his personality in terms of his pronouncements. How he sat and judged is not visible to human eyes but his written words are preserved to enable us to perceive his lofty stature. He belongs not to a near past but his distant footsteps still echo through the corridors of time. No gallery of judicial portraits which does not include Mahmood can pretend completeness. He was the first Indian Judge to be elevated to the Bench of the Allahabad High Court, but that is not his only claim to fame and remembrance. His distinction rests upon his pronouncements, the flames of which remain undimmed unto this day.

Born at Delhi in 1850, he was the second son of Sir Saiyed Ahmad Khan. Mahmood's childhood did not give any indication of his future nor his educational career was marked by any phenomenal achievement. After completing his early education at Delhi and then at. Queen's College, Benares, he proceeded in 1869 on a Government of India scholarship to join the Christ Chuch College, Cambridge. At Cambridge he had a successful academic career and attained proficiency in oriental and classical languages; yet it was not sufficiently distinguished even for the most prophetic of professors to predict that the young graduate was one day to blaze as a bright star in the firmament of law. He was called to the Bar in 1872 and on return to India in due course he joined the Allahabad Bar. Not much is known of his achievements at the Bar and perhaps there may be none, for he did not stay there long to make them. In 1879 he was appointed a District Judge at Rae Bareli and it was within three years that he was selected to officiate on the High Court Bench at the early age of thirty-two, an. age when most of the young lawyers are still emerging from obscurity. During the brief span of his district judgeship Mahmood gave judgments which could do credit to any distinguished Judge of the High Court. Unlike most of the district judges, he was not a mere satellite revolving round the dictums of the High Court. His exposition of law in his judgment in the case of Deputy Commissioner, Rae Bareli v. Raja Ram Pal Singh delivered as a District Judge, Rae Bareli so much struck the eyes of the members of the Judicial Committee of the Privy Council that they while expressing their concurrence in their judgment in P. C. Appeal No. 3 of 1882 with his opinion were said to have conveyed to the Secretary of State of India their view that so talented a person should not be wasted in the subordinate judiciary. The elevation of Mahmood to the High Court Bench so early was a fulfillment of the desire expressed by the Judicial Committee. After expiry of his officiating term he reverted to the Bar. His permanent appointment as a Judge of this Court came in 1886.

The latter part of the 19th century may very aptly be described as the Augustan age of the Indian judiciary. With Sir Guru Das Banerji in Calcutta, Muthu Sami Aiyer in Madras, K. T. Telang in Bombay and Mahmood in Allahabad, the High Courts in India had the semblance of a sanctuary where distinguished luminaries in law with impeccable vision sat like sages to expound the immutable principles of jurisprudence for the future generations. Comparisons are odious and to say that each one of them was great and illustrious in his own way would be nearer the truth. Nevertheless it is equally true to say that few men in the sphere of law have won the same unquestioning recognition as Mahmood. It was not in vain that Sir Whitley Stoles in his general introduction to Anglo Indian Codes remarked, "Of these judgments none can be read with more pleasure and few with more profit than those of the Hindu Muthu Sami and the Mohammadan Syed Mahmood. For the subtle races that produce such lawyers no Legal machinery can be too elaborate".

The number of his judgments to be found in the law reports are many and cover a wide range of subjects. His exposition of legal principles in some of his judgments invests them with the status of a treatise on law. It is difficult to say which of them is his *magnum opus*, nor delineation of each of them is otherwise possible; hence only a few of them may be referred just to illustrate his legal acumen and innate sense of justice. Jurisprudence to Mahmood was a branch of philosophy where from all human laws were derived and law was most worthy of approval only when consonant with reason-*Lex plus laudatur qundo rationae probatur*. His luminous judgment in the full bench case, Empress v. Phopi reported in I. L. R. 13 Allahabad 171 is best illustrative of his concept of law. Mahmood dissenting from the majority answered that mere notice on the prisoner was not enough and that it was imperative that he should either be heard in person or through counsel. The words "after hearing the appellant or his pleader if he appears" round which the controversy centred, were interpreted by him to mean a condition precedent for the, disposal of the appeal with the right of hearing being inherent in it and the reason for it as seemed to him was that when a man asserted a right, he had to be heard, for the remedy itself implied a right which was not to be confounded with the mode of presentation. The *fons et origo*-source and origin-of the maxims *audi alteram partem* and *ubi jus ibi remedium* was not local but human jurisprudence and his deep sensibility of it is evinced by the following passage of his judgment:

> "It is no, use tying a person by the leg making it impossible for him to appear and then saying to him we are to hear you if you appear, when all the while we know that we have made his appearance impossible".

It is unfortunate that the majority on the full bench should have failed to perceive the sublimity of his viewpoint'. The reason for it is rather traceable to contrariety of fundamentals of the 'two. To Mahmood 'hearing' seemed imperative to render a process, just, it was sacrosanct being the creation of *summum jus*. Those who dissented from him could not see any sacredness in the right of hearing for they were more prone to keep law and equity asunder instead of joining the two. The great judge viewed the station of justice in the perspective, of Divinity and any outrage upon it, if not redressed by human agents on the earth, shall have to be recompensed by the Creator. Nothing better would convey the poignancy of his feeling than the following Urdu couplet which he quotes in hisl judgment:

Qarib hai yar roze maihshar

Chhupega kushton ka khun kyun kar

Jo chup rahegi zubane khanjar

Lahu pukarega aasteen ka.

His own translation of these lines is "Oh friend! the day of judgment is near, how then will it be possible to conceal by silence the blood of those killed. Even if the tongue of the dagger will keep silence the blood on the sleeve will speak out". His pronouncement may not have the force of a precedent but surely it shakes our soul and that is enough recognition of it.

In Matadin *v*. Kazim Husain, a full bench case reported in I. L. R. 13 Allahabad 432, Mr. Justice Mahmood dissenting from the majority held that the word "property" was used in a most generic sense and included the right known as equity of redemption. The majority view was that the term "property" meant an actual physical object and did not include mere rights relating to physical" objects. The premise upon which Mahmood's conclusions were founded was that the phrase "transfer of property" as occurring in Section 58 of the Transfer of Property Act included what was known to the English law as the equity of redemption. While pointing out the distinction between the English and the Indian law of mortgages in the course of his judgement he says, ' "that an Indian mortgage of any kind does not mean the conveyance of property absolutely to the mortgagee so that even if the English technical phrase 'legal estate' as distinguished from the 'equitable estate' were to be imported into the Indian law of mortgages, it must be held that notwithstanding the execution of mortgage of any kind the legal estate vests not in the mortgagee but remains in the hands of the mortgagor, for he continues to be the owner of the property entitled to deal with it as he likes, subject of course to the incident of the mortgage which he has already executed." Ultimately the decision of the majority in this full bench case was overruled by a subsequent full bench in the case of Rama Shankerlal P. Ganesh Prasad reported in 29 I. L. R. Allahabad page 385. The members of the latter full bench felt obliged to accept Justice Mahmood's exposition of the word "property" and laid down the law in terms of the ratio contained in the dissenting judgment of Mahmood in Matadin's case.

His notable judgments on Mohammadan law are many but it may not be possible to refer to each of them. One of such judgments is in the full bench case of Jafri Begum *v*. Amir Mohammad Khan reported in I. L. R. 7 Allahabad 822. The main question referred to the full bench was "whether upon the death of a Mohammadan intestate who leaves unpaid debts with reference to the value of his estate, does the ownership of such estate devolve immediately on his heirs' or such devolution is contingent upon and suspended till payment of such debts". His answer that existence of debt did not affect devolution, proceeding upon the works of Baizawi the greatest commentator of Qoran), Alsirajiyyah and Hedaya, belong more to the realm of a treatise than a mere pronouncement. As a piece of historical investigation the judgment stands supreme for it illumines many a dark corners of the Mohammadan law. Another noteworthy judgment delivered by Mr. Justice Mahmood on Mohammadan law is in the full bench case of Mohammad Allahdad Khan v. Mohd. Ismail Khan reported in I. L. R. 10 Allahabad 289. The suit giving rise to the appeal before the High Court related to the exact scope of the rule of the Mohammadan law arising from acknowledgment of parentage. The questions involved were "what according to the Mohammadan law is the effect of an acknowledgment by a Mohammadan that a particular person born of the acknowledger's wife before marriage is his son and how does such acknowledgment affect the status of the person in reference to whom it is made". In answering the reference he held that although according to the Mohammadan law acknowledgment in general terms stands upon much the same

footing as an admission as defined in the Evidence Act, acknowledgments of parentage and other matters of personal status stand on a higher footing than matters of evidence and forms part of the substantive Mohammadan law. In his opinion where legitimacy could not be established by direct proof of a valid marriage, acknowledgment had been recognised by the Mohammadan law as a means whereby marriage of the parents or legitimate descent of the child maybe established as a matter of substantive law and that such acknowledgment always proceeded upon the hypothesis of a lawful union between the parents, for there was nothing in Mohammadan law similar to adoption as, recognised by Roman Hindu systems, ' or admitting of an affiliation which had no reference to consanguinity or legitimate descent. The judgment of Mahmood, J. in this full bench case is so elaborate and comprehensive that even the best of its summary would give only a faint echo of the original and without quoting his own words one may justice to his composition. He observed: "And I have no doubt that I am representing the views of the Mohammadan jurists rightly when I say that there is no warrant in the principles of the Mohammadan law to justify the view that a child proved to the offspring of fornication, adultery or incest could be made legitimate by any act of acknowledgment of father. I repeat that rule is the limited to cases of uncertainty of legitimate descent, and proceeds entirely upon an assumption of legitimacy and the establishment of such legitimacy by the force of such acknowledgment. "

Hindu law was not left untouched by Justice Mahmood and though his pronouncements on the subject are not many, still the few that are contained in the law reports are not lacking in massiveness or excellence, characteristic of his judgments. His conclusions in Binda v. Kaushilya (I.L.R. 13 Allahabad 126) where he upholds the right of a Hindu husband to sue for restitution of conjugal rights, are largely founded upon original texts. Sir Tej very aptly observed: "It must be said to the credit of Mr. Justice Id that at least with respect to the Hindu law, he like the Late Mr. Justice Ranade, always attempted to reconcile' the wisdom of ancient sages to the mixed civilizations of their descendants. "

In the sphere of procedural enactments, Mahmood always leaned in favour of widening the scope of the statutory rules. The Procedural laws, as he conceived them, were subservient to substantive laws, a mere means to the ultimate end. He never acquiesced in a construction which limited the operation of a rule so as to entail deprivation of substantive rights. In his dissenting judgment in the full bench case of Nar Singh 'Das v. Mangal Dubey (I. L. R. 5 Allahabad 163) he says "the courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law". Why to such a sound rule of interpretation the majority should not have agreed, one woefully pauses to think. The soundness of Mahmood's above exposition was recognised by the late Sir Ashutosh Mukerji who, in all fairness to truth, followed Mahmood's reasoning in Nar Singh Das's case in his judgment delivered in Chhayunnessa Bibi v. Kazi Basirar Rahman (5 Indian Cases, 532).

Chitor Mal *v*. Shib Lal is another leading case which had raised a controversy of unusual nature. It was on the doctrine of salvage and his judgment is remarkable for the emphatic way in which he censured the English law as being unreasonable so far as it restricted the doctrine of salvage purely to maritime salvages. He found little justification for putting the perils of the sea on a separate juristic footing from those arising on the land and to express his indignation he observed "but why that equity should stop at the sea-shore, I frankly and respectfully confess I am unable to conceive for I cannot help feeling that doctrines of equity are no more governed by the peculiarities of the sea than by the peculiarities of the land".

In the year 1887 the High Court was faced with a grim situation in the case of Lal Singh v. Ghanshyam Singh (I L. R. 9 All. 625). The question to be resolved was that when a vacancy had occurred in the Court reducing the number of Judges originally appointed under clause 2 of the Letters Patent, whether the omission by Her Majesty and the local Government to fill up the vacancy had vitiated the constitution of the Court. By clause 2 of the Letters Patent it was provided that the Court until further or other provision should be made in accordance with the Act, shall consist of a Chief Justice and five Judges, and the first holders of these offices had been named, and on the basis of this provision the argument of the learned counsel was that as at the relevant time the Court consisted of only the Chief Justice and four Judges, and in the absence of any provision authorising less than the full number of Judges to exercise the powers of the Court defined in clause 2, the Court whose jurisdiction had been created and defined by the Letters Patent no longer existed. The matter was heard by the entire Court and the unanimous opinion of all the Hon'ble Judges including Mr. Justice Mahmood was that by clause 2 of the Letters Patent it was not intended that if the Crown or the Government should omit to fill vacancy among the Judges under the powers conferred by section 7 of the High Courts Act so that the Court should then consist of a Chief Justice and four Judges only, the constitution of the Court should thereby be rendered illegal, and the existing Judges incompetent to exercise the functions assigned to the High Court. In negativing the objection of the late Pt. Ayodhya Nath, Mr. Justice Mahmood's statement of law so succinctly put by him in his judgment is "Now it is very important to note that whilst in connection with the appointment of Chief Justice the Statute employs the expression 'shall appoint'. The same section in connection with the appointment of Puisne Judges uses the phrase' it shall be lawful' for the Government to fill up the vacancy. The change in the language is remarkable and I understand it to be a well known rule of construing statutes that when in one and the same section which relates to any special purpose two expressions of such different meanings are employed, the Legislature must be taken to have intended a distinction. This being so, the phrase' it will be lawful cannot be held to mean that it was imperative upon the Government to fill up any vacancy in the office of a Puisne Judge of this High Court". Although the point was sufficiently settled by the Full Bench judgment still he was not complacent. Lest such a situation should arise again he in his minutes to the draft bill of 1889 moved in the Parliament suggested for defining the phrase' High Court'.

I have left till the end one of his classic judgments without mention of which a catalogue of his pronouncements can scarcely be regarded as complete. This brings me to the leading Full Bench case of

Govind Dayal *v.* Inayatullah on the law of pre-emption reported in I. L. R. 7 Allahabad 775, The earlier decisions on the right of pre-emption seemed to founder on the mistaken belief that the right of pre-emption was a personal right of repurchase involving a new contract of sale. Mahmood in tracing the history and nature of the right of pre-emption has established that such a right is simply a right of substitution and is an incident of property entitling the pre-emptor by reason of such legal incident to stand in the shoes of the vendee in respect of all rights and obligations. On this aspect of the law his opinion seems to be unquestionable but a doubt lingers on as to the correctness of his opinion on the other part of his answer that right of pre-emption never existed under the old Hindu law and was essentially a creation of Mohammedan jurisprudence.

In fact the right of pre-emption was equally recognised by Hindu law, and this humble assertion : finds support in Mahanirvana Tantra (Shlokas 107 to 112, Chapter II). The fallacy in Mahmood's approach appears to reside in the assumption that custom of preemption could grow up only under the Mohammedan law. He wrongly thought that such right had never been recognised by the Hindu law. The shlokas in Mahanirvana Tantra have been translated by the late Shri Shyama Charan Sarkar and fully discussed by him in his works Vyavastha Chandrika, Volume II, Part I, page 626 as well as in Vyavastha Darpan, Volume I, page 643 (1883 Edition). The translation of these shlokas is as follows:

> "The proprietor of an immovable property having a neighbour able to purchase it, is not at liberty to sell such property to another. Among neighbours he who is an agnate or of the same caste is preferred. In default of them a friend (here) the will of the; seller prevails. Even if the price of an immoveable property be settled by another, yet if a neighbour, desiring to purchase it, tenders that price he becomes the purchaser and not the other. If the neighbour be unable to pay the price or give consent to the sale then the householder (i. e. the land-holder) is at liberty to sell it to another. 'O Goddess (Shiva addressed all the Shlokas to Parvati)'. If an immoveable property be sold in the absence of the neighbour and he (the neighbour) pays the price immediately on hearing (of it), he is entitled to have the same. If, however, the purchaser has made houses and gardens thereupon or destroyed them (then) the neighbour is not entitled to have (such) immoveable property even by paying the price. "

Sir William Macnaughten an eminent scholar of Hindu and Mohammedan law has in the preface of his work on Mohammedan law, quoted the Shlokas mentioned above and his observation: "but it remains to be decided whether this shall be held to be the practical law or not", cannot be understood to mean that he doubted the authenticity of these shlokas. It would not be fair to whittle down the genuineness of these shlokas on the ground that they have not been cited in the later commentaries on the Hindu law nor recognised in the current law books and that the Mahanirvana Tantra is not mentioned in the list of tantras. Needless to say that the value of this work is not to suffer by the fact that it has not been reviewed in many of the current commentaries on Hindu law. As emphasised by the late Mr. Sarkar, this Tantra ranks equal in sanctity to the vedas and its ordinances should doubtless override even those of the sages for Mahanirvana Tantra according to the belief of the Hind us is said to have been revealed to this world by Mahadeva one of the Gods of the Hindu trinity. Then factually too it would be incorrect to say that Mahanirvana Tantra is not recognised as one of the ancient tantras. Mahmood's denunciation of Mahanirvana Tantra as not being an ancient work and the shlokas therein as interpolations is built upon his unawareness that Mahanirvana Tantra is one of' the set known as Rath Kranta Tantra which has been referred to in Agni Puran and Padma Puran. With all this fallacy to which it has been my truthful, though disagreeable, duty to allude to, the judgment in Gobind Dayal's case stands as a *locus classicus* on the law of pre-emption. It is vain to hope that the truth dwelling in the innermost recesses of the texts on Hindu law shall ever emerge out to vindicate itself.

These extracts of the reported cases do not represent more than a fraction of the judicial pronouncements of Mr. Justice Mahmood, for my selection has been confined to decisions of admitted significance and of present value. Many may miss cases to which they attach importance and some explanation might be due to them. As one ransacks the law reports of the seven years one would find them an expanse where one would easily lose his way and the possibility of omission of something which should have been included 'there is always inherent in a task so difficult as this.

Few might be aware of the memorable minutes of Mr. Justice Mahmood, which strangely enough have remained veiled from the public eye so long. The minutes of Mr. Justice Mahmood are on the draft bill intended to be introduced in the Parliament and special provisions to be contained in the Letters Patent. This bill was introduced in the Parliament in the year 1888, the main aim of which was the extension of (he territorial and other jurisdiction of the existing High Courts, and was intended to be a kind of supplement to Statute 24 & 25 Vict. c. 104. The suggestion of Mr. Justice Mahmood to this draft bill was that the bill should empower Her Majesty to extend the High Courts' jurisdiction to any territories which had either been assigned to the Government of India or over' which jurisdiction had been granted by native States to the Government of India. Section 3, Statute 28 & 29 Vict. c. 15 enabled the Governor-General-in-Council to empower the High Courts "to exercise any such jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of such of the provinces and States of India in alliance with Her Majesty as the said Governor General-in-Council may in the manner aforesaid from time to time determine. In his minutes he suggests for provision of an additional clause in the proposed bill to enable the Government of India to achieve the object of the bill. The reason for it he assigned was that the power under section 3 was limited to " Christian subjects of Her Majesty" and secondly that it extended to territories which had neither been assigned nor had jurisdiction in respect of them been granted to the Government of India by the Native States. He suggested that the phrase" personal jurisdiction" occurring in section 2 of the draft bill being susceptible of some ambiguity and likely to give rise to doubts in its interpretation in a country like India where the population was not homogeneous necessitated a substitution " to obviate the possibility of any argument being raised to the effect that a

native Judge of a High Court was precluded from exercising any jurisdiction by reason of his personal nationality".

In view of the expected extension of the High Court's jurisdiction to Oudh he emphasised the necessity of defining the phrase' High Court' as it occurred in Statute 24 & 25 Vict. c. 104, especially in section 13 of that enactment. The necessity for such definition, as pointed out by him in his minutes, arose from the fact that the success of the proposed amalgamation of the two Courts depended upon the rules that the Court may frame under these sections. In this connection he recommended for the increase of jurisdiction of single Judges in civil matters and for criminal appeals especially those involving sentences of transportation for life he' voted for their disposal by a Bench consisting of at least two Judges. His statement in his minutes is "so strongly do I entertain these views that when I believe, I had a chance of being appointed to act as Judicial Commissioner of Oudh, I had made up my mind to decline the office if it were offered to me upon the ground (not purely one of sentiment, but of conscience) that in my opinion no single human being should sit as a Judge over the life of another". At another place in his minutes he records "All the more caution is necessary as in criminal cases no appeal lies to the whole Court under section 10 of the Letters Patent as it does in civil cases, however, petty or small they may be. My fear is and I say this with due respect) that under the present rules of the High Court much greater importance is attached to the property of persons than to their lives and liberties".

Another reason which he found for a careful definition of the phrase "High Court" was the lurking danger of confusion between the requirements of the Statute as to vacancies in the office of the Chief Justice and vacancies in the office of Puisne Judge. This danger had once stared the constitutional authority of the High Court in the case of Lal Singh v. Ghanshyam Singh and the prospect of its repetition was certainly to be guarded against.

Other suggestion which he put forward was for stationing one Judge permanently at Lucknow and for deputation of a second Judge by rotation to make up a bench for disposal of such cases at Lucknow which under the rule could not be disposed of by a single Judge.

In his views on the question of language, he was not wholly of his time. The dismissal of appeals without any hearing on the solitary ground of the appellants' failure to translate the record of the case into English was, as he felt, travesty of justice. His words I of censure as contained in the Minutes are: "I think in view of the vast population which will be affected by the rules or practice as to enforcing translations, the matter is sufficiently significant to be taken in hand by the Government which is responsible for the peace and administration of the country, rather than be left to considerations relating to the convenience of the Judges. The truth is that the rules as to translations into English involve so considerable an expense on the part of litigants that they practically amount to imposing a tax upon the litigant population and I am afraid in some cases amount to a denial of Justice. I say this with due respect for the opposite opinion. The costs of these translations become costs in the cause, so that a rich litigant is practically free to swell the costs of a litigation against a poor man by getting the record translated even in petty cases. " He strongly deprecated a state of things in which Hindustani would be absolutely precluded even where speaking English was absolutley impossible-or where the suitor was unable to retain the, services of English speaking pleaders. He accordingly recommended that the draft bill should contain a section somewhat on the lines of section 3 of Statute 28 and 29 Vict. c. 15, that it shall be lawful for the Governor-General in-Council by Order to declare from time to time what language shall be the language of every High Court and to make rules for employment of interpreters and the scope and extent of translations into the language so declared to be the language of the Court.

These suggestions of Mr. Justice Mahmood were, however, unacceptable to his honourable colleagues on the Bench. On every proposal their note was one of complete dissent. There can be no doubt that time has avenged most of his proposals which had wrecked on the disapproval of his contemporaries. Mahmood's statement in his minutes is a model of intellectual conscience. His endeavour was to give the procedure in Courts a new contact with things.

The period of seven years during which Justice Mahmood sat on the Bench was rather short, nevertheless a lustrous one for the Allahabad High Court. 1n 1894 he resigned from the Bench. The circumstances in which he had to do so are rather sad to narrate. In this brief span he brought to law reports a wide store of new concepts which had hitherto not leaped to light. His exit from the Bench was the sorrow of each and everyone in the sphere of law for no longer was his voice to be heard in the High Court or the law reports. Some time after he was nominated a member of the Legislative Council for the North-Western Provinces; but there is not much to say of his work there. In the closing years of his life he resumed practice in the Judicial Commissioner's Court at Lucknow. Late Dr. Satish Chandra Banerji worked with him as his junior. On 8th May, 1903 at the age of fifty-three he passed away leaving behind his footprints on the sands of time. Divinity did not bless him with longevity but that is not to be our sorrow. He filled his brief span with the scores of lifetime. Of him it may be said-

Loveliest of lovely things are they

On earth that Soonest pass away

The rose that lives that little hour

Is prized beyond the sculptured flower.

Living men are often exposed to the reproach of their equals and rivals. The more a man belongs to posterity so much the more unacceptable he is to his contemporaries but that was not so with Mahmood. He could verily be proud of recognition by his equals and contemporaries. That Muthusami Aiyer should have come all the way from Madras to Allahabad to meet Mahmood speaks of Muthusami's real admiration for him. Mahmood was intellectually uncompromising but not vain. Perhaps few may have been so faithful to the traditions of intellectual integrity as Mahmood. Speaking of Mahmood's deep

reverence for his contemporaries Dr. Satish Chandra Banerji writes-"I may, however, note in passing that I have heard Mr. Mahmood observe that a Judge of fact is greater than a Judge of law and imply that he had been more of a Judge of law than fact. He used to express highest admiration for Dwarka Nath Mitter and Muthusami Aiyer, and once told some Mohammedan gentlemen in my presence that he was not worthy to untie the latchets of the shoes of the two eminent Judges. " Indeed large was his bounty and soul sincere.

Thus came to a close a life so vivacious, so radiant, yet so gloomy -a life indeed as moving as any of his judgments he toiled to write. Eardley Norton speaking of Muthusami Aiyer said "he was a great Judge because he was a just Judge", and without apology the same may be said of Mahmood. Both were animated with a purpose which seemed to them greater than their compositions-a purpose of which the composition is only an instrument, a medium. Whatever errors may have crept into his expositions, they neither blemish their excellence nor vitiate his conclusions. It is not given to mortals to either plan with perfect foresight or to always act with unerring judgment; to be infallible is the prerogative of Divinity, to be so to the utmost of one's ability is the glory of man. His constant aim was the deliverance of reason from the servitude of oppressive constructions, to plant latent truths by rooting out illusive conceptions. "Judges must beware of hard constructions and strained inferences ; for there is no worse torture than the torture of laws", says Bacon, and perhaps awareness of this maxim seems to have taken deep roots into the soil of his intellect. Many of the truths even in his dissenting judgments have not sunk into oblivion, they would rise again. No principle he ever laid down was without testing it on the anvil of eternal truths and verities which he believed and, truly, had their origin in the bosom of God. With all reverence for judicial precedents he never allowed them to usurp the place of basal principles. If he broke away from the contemporary tendencies it was because he had the realisation of the inevitability of things. He had a rare vision of the realities of life, and a still rarer talent of making his vision objective. There was nothing like "last word" for him. The certitude in him never rendered his mind impervious to a contrary opinion. Perhaps no other Judge has a larger number of dissenting judgments to his credit than Mr. Justice Mahmood, but then it was inevitable. A seeker of principle that he was, he was never afraid to scale his isolated peak when he had discovered one. To him the apparent was not always the reality, others did not go beyond the obvious. Intellect is the faculty of seer, it discerns truth as a living thing and the relationship of principles to each other. The flame that illumes the cloud is god-sent. This faculty he possessed in the largest measure and so also the flame, and in any case, much more than those who sat with him in adjudications.

On the whole if we consider the scope of his pronouncements it would be difficult to deny him the place claimed for him. History is made only in those periods in which the reality struggles against its contradictions, the periods of submission and acquiescence are but blank pages in it. The years of Mahmood in the Allahabad High Court were the epoch-making years in the history of the Court, for never before concepts in law were faced with more ardent assertions and their vehement repudiations. Contradictions of reality resolve rather slowly and when resolved, there remains only the reality and not its contradictions. In the perspective of eternity it has always been so and it would always remain so and this is our hope for the vanquished propositions of Mahmood. If they have not been recognised so far, our penitent intellect would be impelled to bend before them some day. Mahmood's enunciations are the light of law and he who follows them shall not walk in darkness. He dazzles not by the reflected light of favourable circumstances but by his own intense incandescence. His great contemporaries may have equalled him but never excelled him. His is not a fleeting niche in the hall of fame his shadows lengthen out to remote posterity. Never was any man so great a stimulus to succeeding generation of lawyers and Judges as Mahmood and if some day we seem to be above him it would be because he has raised us on his shoulders. He is gone leaving behind his anchor by which we may steady our ships. But was it indeed a life without its portion of blames and failings. That any life can ever be so is difficult to conceive, at any rate, in human ken. It is an assumption we cannot cavil at, and for his short-comings, whatever they may have been, we may only say they were that of his epoch or those imposed upon him by circumstances; his virtues and goodness were his own!

Neither lamp nor rose adorns his grave; from his mortal clay lying beneath we hear the echo of four words "*Lex est dictamen rationis*"-Law is the dictate of reason.