The High Court for the North-Western Provinces 1866-1876

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Establishment of the High Court

On the 24th june, 1864, the secretary of the state for India asked the Governor-General in council "to take into your consideration the question of establishing a High Court in the North-Western Provinces, and furnish me with your opinion on the subject at as early a date as practicable".

The Indian High Courts Act, 1861, as all lawyer know, made provision for the establishment of High Courts at Calcutta, Bombay and Madras and for the abolition, on the creation of these courts, of the existing Supreme and Sudder Courts in those cities. It also provided for the establishment , by Letters Patent, of a High Courts in any other part of Her Majesty's territories in India not already included in the jurisdiction of a High Court. High Courts were constituted in the three Presidencies in 1862, and thereafter the only Sudder Court which remained was the Court of Sudder Dewani and Nizamat Adalat for the North-Western Provinces. This Court sat at Agra, although Bengal Regulation VI of 1831 had provided that it was " to be ordinarily stationed at Allahabad ". Its abolition was now clearly only a question of time.

Perhaps it was not unnatural that the Sudder Court Should doubt, when the matter was put to it in 1864, whether that time had arrived. In its opinion the cost of the proposed new Court would be high, there would be difficulty in introducing the use of the English language and there was a lack of adequate accommodation. The Sudder Court, composed of members of the Civil Service, added that it was not for it,

> "to express an opinion as to the increased efficiency of the (new) Court in the determination of Judicial causes which may be expected to result by the addition of Barrister Judges to its number."

The local Government favoured the early establishment of a High Court. It was not worried about the cost and it did not think that there would be any great difficulty in providing temporary accommodation for six Judges at Agra. (Only temporary accommodation was required as the decision had already been taken to erect a new building in Allahabad for the Sudder Court.) The Government of India concurred and the Secretary of State did not delay. Letters Patent creating the High Court were issued on the 17th March, 1866 and published in the Gazette of India on the 13 the June ; and on that day the High Court came into being and the Court of Sudder Dewani and Nizamat Adalat ceased to exist.

The Court of Sudder Dewani and Nizamat Adalat

What kind of Court did the new High Court supersede? Fortunately we know a certain amount a certain amount about it, for the way in which it conducted its business had been investigated in 1864 by Mr. Justice Campbell of the Calcutta High Court. The cause of this enquiry was the concern of the Governor-General with the state of judicial business in the Sudder Court. The arrears on the civil side had more than doubled between the beginning of 1860 and the end of 1863. The annual statement that year was regarded with grave disquiet by the Government of India[1]; and by a resolution dated the 23rd March, 1864, the Governor-General-in-Council decided that a Judge of the Calcutta High Court Should be deputed to Agra. He was to make himself acquainted with the manner in which the business of the Sudder Court was conducted and to recommend the adoption of such changes as would make it conform to the system of the Calcutta High Court.

Mr. Justice Campbell spent about a fortnight in Agra, and he submitted his report on the 14th May, 1864. Mr. Justice Campbell's task was clearly a delicate one; but he was tactful man and it says much for the judges of the Sudder Court that they gave him their full co-operation and furnished him with all the assistance and information he required. His Report shows that the Court was not as efficient as it should have been. For this there were two reasons: the Court's failure to make a sufficient distinction between its judicial and administrative work, and to its unmethodical way of conducting its judicial business.

> "Each Judge has his separate Court-room and separate Establishment, and on going to Court commenced his business by sitting singly to dispose of boxes of English correspondence, periodical returns, miscellaneous applications and Criminal cases not requiring a Bench of two Judges. Certain days were given up altogether to Meetings of the whole Court for discussions on various subjects.
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> "When two days of each week were given to English meetings and Full Benches" (comments Mr. Justice Campbell)" and at least the first two hours of every day to Chamber business, so that (one

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[1] Sir Henry Maine, then a member of the Governor- General's Council, wrote a minute (it is dated the 22nd February, 1864) of which two passages justify quotation:

> "If the simple consideration be taken into account that in every suit one party or set of parties must, in some sense, be in the right, and another party or group of parties in the wrong, the heavy injury to private interests and morality inflicted by keeping righteous litigants for so enormous a time from the enjoyment of what should be theirs, and maintaining wrongful litigants in the enjoyment or expectation of what should not be theirs, becomes too plain a matter of illustration. "
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> "To anybody who is accustomed to the criticism of Judicial systems, it becomes evident on very short examination that the Indian system is founded on the assumption of the comparative incompetence of the Judge of the First Instance. Every Judge in his degree has somebody placed above him, sometimes a series of persons, whose office it is to correct his supposed mistakes…… But so far as the assumption relates to question of fact, I hold it to be a delusion, and based on a false theory of the means of ascertaining truth…… Except in physical science, there is no known measure of the truth of facts except the aggregate of the impressions made on the minds of men of average capacity and integrity by the evidence concerning those facts and of these impressions the most important part is produced by the language and demeanour of the witness and by the characteristics of their story, not as it is read on paper, but as it falls from their lips. It follows that a Judge of moderate abilities, who is actually in contact with the witnesses, has a far better chance of arriving at truth than a Judge of much higher power who hears the evidence at second-hand even when that evidence is completely taken on paper."

Judge also sitting out each day to write judgments) each Judge sat on a Bench of two Judges only three times each week, and then the Bench did not sit until the afternoon, it would scarcely have been necessary to seek for any other cause for the comparatively slow rate and consequent arrears, for which such a system would seem to go far to account without prejudice to the industry and devotion of the Judges."

It is but fair to add, as the learned Judge acknowledged, that as a result of the time devoted to it the administrative superintendence of the Sudder Court over the inferior courts was much superior to that exercised by the Calcutta High Court.

The Court seems to have conducted its judicial business in a very informal manner, for Mr. Justice Campbell thought it appropriate to suggest that

"the cases should be regularly called on in due order, and that the proceedings should be so conducted that the order and nature of the business before the Court should be intelligible to a bystander, and should not in any degree approach the semblance of Chamber business transacted between the Vakeels and the Judges."[2]

The increase in the Court's arrears which had so concerned the Governor General, seems to have been largely due (as we know was the case nearly a hundred years later) to an increase in the number of appeals filed, for the volume of work done by the Judges compared favourably (as again was the case a century afterwards) with that of the other Presidency Courts. This what Mr. Justice Campbell says :

"……. the total cases actually decided by the three Court of the North-Western Provinces, Madras and Bombay, during the two year 1861 and 1862, expressed in special appeals, would be-

North-Western Provinces 3, 129

Madras 1, 981

Bombay. 723

and in 1863 for the North-Western Provinces and Bombay (Madras return no received)-

North-Western Provinces 2, 045

Bombay. 956

It will be seen that the Bombay Court, with a larger number of Judges, has done less than half the quantity of work ; the business of that small Presidency being, in fact, so light that there was little more to do."

The Court buildings were not approved by Mr. Justice Campbell. After referring to "the scandal and political loss of dignity caused by the present location of the Courts of Justice at Agra among the uncleared and uncared for ruins which remain a monument of the worst times of the mutiny" he goes on to say:

"It is more what one might imagine of the Courts and Offices of a ruined and falling Empire, after a penultimate invasion of the Goths, than the Judicial Capital of the civilized and progressive Government of 30 millions of people…… The Senior Judge has a room which would be fairly enough adapted a Chamber business, or for a Court of inferior importance ; but the other Benches are in rooms which look more like long narrow wine-vaults than Courts, and the places extemporized for the newly arrived judges look like compartments in a eating house. "

The state of the buildings led Mr. Justice Campbell to urge strongly that the new High Court, if it were established, should from the beginning be in Allahabad. The local Government, however, thought otherwise : it saw no difficulty in providing adequate accommodation for the new Court at Agra "though", as it said, "it might possibly not fulfil the expectations of so exacting a visitor as Mr. G. Campbell. "

The language of argument in all civil work in the Sudder Court was Hindustani or Urdu. English could be used by agreement of both parties, but as that agreement was usually not forthcoming the use of English was, in practice, prohibited. This was, as has been mentioned, on of the objections taken by the Court to the early establishment of a High Court. In order to pave the way to the greater use of English the Court informed the local Government that it proposed to adopt a rule that after the 1st January, 1864 no pleader would be admitted to practice who was not possessed of sufficient knowledge of English to follow oral pleadings in that language. This was agreed by the Lieut. Governor who, however, thought it proper also to give power to the Judge to admit pleadings in English whenever he considered it expedient.

On the criminal side the position was very different. At that time the prosecution entered no appearance in criminal matters, and accordingly there was no "opposite-party" who could object to the use of English. Moreover under a rule of the Court anyone could appear for an accused person as his agent. It was not necessary that he should be an advocate of the Court. The result was deplorable-

"When a man has failed in half-a-dozen avocations, has been rejected as a Government servant, cashiered as a soldier, become bankrupt as a trader, has broken down in his undertakings as a

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[2] This suggestion was accepted by the Court which later in the year issued "Rules for the conduct of Oral Pleadings" of which the first three were:

"1. In addressing the Court, Pleaders will not approach the Bench, but will deliver the whole of their argument in a regular and connected speech addressed to the Judges from their proper places.

2. All other Pleaders, but the Pleaders addressing the Court, shall remain seated. No Pleader shall, on any pretence, address the Pleader on the other side, or any other person than the Court.

3. The two Pleaders on the same side will not be permitted to interrupt each other. The first must finish his speech and sit down, once for all, -after which the second Pleader may rise in his place and ask to be heard. "

> speculator or public works contractor, a kind of law of gravitation seems to bring him to the last resource of all, and he announces himself as a ‘Law Agent’ or by some such title."

There was one further curious feature of the old Court. In common with the other Sudder Courts of the Bengal Presidency it had no Chief Judge. Early Regulations had made provision for a Chief Judge, but a later enactment, Regulation III of 1829, abolished the designation of "Chief or Senior Judge"- the juxtaposition of the two adjectives is significant- as its use, the Regulation says, " had in some instances been productive of inconvenience. " The cause of the change is to be found in the rule of seniority. All the Judges were then covenanted servants of the East India Company, and it seems that rather than depart from that rule, where the senior judge was not the best fitted for the office of Chief Judge, the Company preferred to abolish the office. In any event the want of a Chief Judge undoubtedly contributed to the unmethodical way in which the Sudder Court did its business.

The first Judges of the High Court

Sir Walter Morgan, William Edwards, Alexander Ross, William Roberts, Francis Boyle Pearson and Arthur Charles Turner were named in the Letters Patent as the first Judges of the new Court. Sir Walter Morgan, the Chief Justice, and Mr. Justice Turner were barristers; the others were members of the Bengal Civil Service and had been judges of the Sudder Court. Mr. Justice Edwards and Mr. Justice Ross must have been on leave when the new Court was established, as Mr. G. D. Turnbull and Mr. Robert Spankie (both members of the Civil Services) were appointed to officiate as Judge in their places by a notification which appeared in the issue of the Gazette of India which contained the Letters Patent.

Sir Walter Morgan

Sir Walter Morgan was born in 1821. He was educated at King’s College, London, and at the age of twenty-three was called to the Bar by the Middle Temple. He practiced for some years in England, and then went to Calcutta where he was admitted as a member of the Supreme Court Bar. In 1854 he was clerk to the Legislative Council of India, in 1859 a Master in Equity to the Supreme Court and in 1862 he became one of the first Judges of the new High Court at Calcutta established in that year. This office he held until he was appointed the first Chief Justice of the High Court for the North-Western Provinces.

The circumstances in which he left Calcutta displeased the then Chief Justice of Bengal, Sir Barnes Peacock, who, in a Minute dted the 28th May, 1866, recorded that Mr. Justice Morgan had tried only one case (and that undefended) since the announcement in March of his appointment to Allahabad, and that he had left Calcutta early in May without having

> "thought fit to communicate with me upon the subject, nor has he condescended to inform me of his intention to leave Calcutta, which, even if he has ceased to be Judge of the High Court here, from the time of the announcement in the London Gazette of his appointment as Chief Justice of the High Court to be established at Agra, would not have been more than common courtesy demanded."

Aged 41 when appointed a Judge in Calcutta, Sir Walter Morgan was 45 when he became Chief Justice- an office he held until 1871 when he became Chief Justice of Madras. He retired in 1879 and died in London in 1906 at the age of 85. He had married in 1849, but Sir Henry Braund in his brief sketch of Sir Walter Morgan had found no evidence of his wife having visited Allahabad. Sir Henry Braund records that on the Chief Justice’s departure on leave in March 1870 the Indian Bar, headed by Maulvi Hyder Hossain, presented him with a moving farewell address in which they commended his "untiring patience"; and that his final departure from Allahabad was universally regretted.

Edwards, J.

Mr. Justice Edwards is the only one of the civilian judges about whom we know more than the barest biographical details. Appointed to the Bengal Civil Service in 1837 he would in the ordinary course have made his first journey to India by ship round the Cape of Good Hope. He was, however, a fortunate young man, for just before he was due to leave it was suggested by the Court of Directors that he should take the overland route from Alexandria to Suez (the canal had of course not then been constructed) to test the possibility of this route as one suitable for mails and passengers. Edwards accepted the suggestion with alacrity, and after an adventurous journey reached Bombay after nine weeks’ travel. On arrival in India he was appointed Assistant Secretary to the Government of Agra, but was shortly afterwards made an Under-Secretary to the Government of India, Lord Ellenborough being then the Governor-General. In June, 1843 he went with the Governor-General from Allahabad to Calcutta, the journey being made by the quickest route, which in those days was by steamer. In the same year he was present at the battle of Maharajpore fought against the Mahratta Confederacy. His health then appears to have given him some concern, and in 1847 he was appointed Superintendent of the Hill States-the territory lying between the Sutlej and the Jumna – with his headquarters at Simla. He seems to have been a man of warm sympathies for those under his charge ; and, distressed at the want of any educational facilities for the local children, he devised a scheme whereby the monetary offerings made by princes and chiefs to the political Agent were constituted a fund for the establishment of a central school at Simla and a local school in each chiefship. The scheme worked. A training school for teachers was established and elementary school books in the hill dialect were prepared and printed; and later on the system thus established was extended to the United Provinces.

Edwards, as Superintendent of the Hill States, was also troubled by the hardship caused to the local inhabitants by the prevailing practice of requiring them to act as porters for the carriage of baggage from the plains to the various hill stations. What was needed, he thought, was a road for wheeled traffic. He pressed the idea on the authorities, marked out part of the suggested course it should take, secured the help of army engineers and ultimately succeeded in persuading a somewhat reluctant Government under Lord Dalhousie to sanction the construction of the Kalka-Simla road.

After 15 years' continuous service in India, Edwards in 1852, went to England on leave. He returned in 1854-only to find that there was no employment for him in the political or secretarial departments. As a consequence he was, as he says, "forced to enter the judicial and revenue branch of the Service. " Clearly, he did so with reluctance. His first judicial appointemt was as Magistrate and Collector at Benares. In 1855, he was transferred in the same capacity to Budaon but was back in Benares in 1860 as the Civil and Sessions Judge. In 1862-after 8 years' judicial experience –he was appointed to the Sudder Dewani Adalat, where he remained until he became a judge of the High Court on its establishment four years later. His career on lthe High Court was short. On leave when the Court was established, he did not take his seat until December 1866; and he retired in March of the following year. As a youg man he had, in 1845, published a useful collection, in two volumes, of "Treaties and Engagements between the Hon. East India Company and the Native Powers in Asia ", with an introduction and notes. In the year in which he was appointed to the high Court he published the "Reminiscences of a Bengal Civilian" which contains a robust Victorian account of an adventurous and interesting life.

Unfortunately very little seems to be known about Mr. Justice Edwards' three service colleagues on the Sudder Dewani Adalat. An examination of the Civil lists and records of service (the first published volume of the latter appeared only in 1880) discloses only the barest biographical details, and of the accuracy of some of these it is difficult to be sure.

Ross, J.

Alexander Ross was educated a Edinburgh Academy and the University of Edinburgh. He entered the Bengal Civil Service in 1836 and ten years later he became Superintendent of Dehra Dun. From 1858 to 1863 he was Civil and Sessions Judge a Faruckhabad, and it was probably during this period that he became a member of a special commission appointed to try the Nawab of Faruckhabad for complicity uin the events of 1857. He was a Judge of the Sudder Court and thereafter of the High Court from 1863 to 1871.

Roberts, J

William Roberts arrived in India in 1839. He was Civil and Sessions Judge of Gorakhpur in 1860, Commissioner of Rohilcund from 1862 to 1865 and a Judge of the High Court from 1866 to 1869. He died in the south of France on the 27th January, 1870.

Pearson, J.

Francis Boyle Pearson was educated at the proprietary School at Islington, on the outskirts of London. He arrived in India in 1840 having passed, as was then required of all entrants to the service, through the East India Company's College at Haileybury. He was employed as a Settlement Officer in Jullunder in 1849 and became Registrar of the Sudder Court in the following year. After service as Civil and Sessions Judge at Benares, Saugor and Cawnpore he became an officiating judge of the Sudder Dewani Adalat in 1862. He was a Judge of the High Court from 1866 to 1881.

Turner, J

The first barrister puisne judge, Charles Arthur Turner, 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 April 1858, and at the exceptionally early age of 33 he was appointed to the Allahabad High Court. He was (according to the writer of his obituary in The Times) an earnest member of the Church of England and a man of strong feelings and warm heart ; and he had unusual physical strength. Whether he had a judicial temperament may perhaps be doubted, but it is said that he found pleasure in the intricacies of Indian land law and was a very good administrator. He remained on the Court for twelve years and then succeeded Sir Walter Morgan as Chief Justice of Madras. While in Madras he was twice Vice-Chancellor of the University, and towards the end of his term of office he became a member of the Indian Public Service Commission. Three years after his retirement in 1885 (at the age of 52) he was appointed to the Council of India and Later during his ten-year period of service became the Vice-President. It is recorded that after his retirement (money being worth more than it is today) he was able to indulge his passion for purchasing pictures. He died on the 20th October, 1907.

Turnbull and Spankie, JJ.

George Dundas Turnbull and Turnbull and Robert Spankie, both of whom became officiating judges of the Court in 1866, remain shadowy figures. The latter-distinguished from his brethren by being educated at Eton-had previously officiated on several occasions as a Judge of the Sudder Court. He succeeded Mr. Justice Edwards in 1867 and retired at the end of May 1881. Mr. Turnbull officiated as a Judge of the High Court in 1870, 1871 and 1873, but for reasons which can only be surmised he was never confirmed. His last appointment was as Civil and Sessions Judge of Meerut.

Jardine, J.

Mr. William Jardine, the first Government Advocate of the North-Western Provinces, officiated as a Judge of the Court for a few months in 1873 in the place of Mr. Justice Turner. He died on the 17th August of the same year.

Sir Robert Stuart

Sir Robert Stuart succeeded Sir Walter Morgan as Chief Justice in November 1871, and for the next two years the Court seems to have worked with an effective strength of four. In 1874 Mr. R. C. Oldfield and Mr. M. Rodhurst were made additional judges but nether seems to have been confirmed as a permanent judge for seven years.

Sir Robert Stuart was born in Scotland in 1816, and was therefore five years older than the Chief Justice whom he later succeeded. He was admitted to the faculty of Advocates in Scotland in 1840. Some years later he came to London and joined Lincoln's Inn of which he became a Bencher in 1868 and Treasurer in 1884. In London he practised on the Chancery side and was made a Queen's Counsel in 1868. He was sworn in as Chief Justice At Allahabad on the 22nd November, 1871 and Sir Henry Braund notes that he received from the press a cold and critical reception as he was thought not to be of such legal distinction to warrant his high appointment.

Twice during his term of office the Court was involved in controversy with the Government, the question on each occasion being the independence of the Court from executive interference. The first occasion was in 1873. One Girdhari Lal lost a civil suit in the High Court on the defendant establishing a plea of minority; and he was ordered to pay the defendant's costs. He was unable to do so and was committed to the civil jail at Dehra Dun. There he was seen by the Lieut.-Governor, Sir William Muir, during a tour of inspection. The Lieut.-Governor's sympathy was aroused by Girdhari Lal's plight, and he directed the Subordinate Judge to proceed under the Provincial Insolvency Act, and if the Judge was satisfied that the judgment-debtor had no means of paying the costs, he was directed to consider whether the debtor should not be released from imprisonment. The High Court protested that the Lieut. -Governor's action was an unwarranted interference in the judicial administration, and in March 1874 the Government of India, to whom the matter had by then been referred, upheld the High Court's view.

Much more serious was the difference of opinion which arose in 1876 over the case of The Queen against Fuller. Fuller was an English pleader practicing in Agra. One Sunday he and his family were about to go to church ; the carriage was brought to the door but the syce failed to appear. He was sent for, and when he came Fuller struck him with his open hand on his face and head so that he fell down. Fuller and his family went to church : the syce got up, went some 200 yards to an adjoining compound and died almost immediately. Fuller was tried by Mr. Leeds, the joint-magistrate at Agra who framed a charge of causing hurt under section 323 of the Indian Penal Code. There was some conflict of evidence as to the number and nature of the blows struck by Fuller, but the medical evidence was that the syce had no marks of injury and had died from rupture of the spleen which, with very slight violence, would be a sufficient cause. The Magistrate sentenced Fuller to pay a fine of Rs. 30 or underog 15 days' simple imprisonment. The High Court came to know of the matter when it received a request from the Local Government, at the instance of the Government of India, for its opinion on the adequacy of the sentence. Although not coming before it judicially the record was considered by the Judges and the Local Government was informed that, although the sentence was lighter than the Court itself would have disposed to inflict, it was not in the circumstance specially open to objection. The Government of India, understandably one may think , took a different view :

> "The Governor-General in Council cannot but regret that the High Court should have considered that its duties and responsibilities in this matter were adequately fulfilled by the expression of such an opinion. He also regrets that the Lieut.- Governor should have made no enquiry, until directed to do so by the Government of India, into the circumstances of a case so injurious to the honour of British rule, and so damaging to the reputation of British Justice in this country.... It was the plain duty of the magistrate to have sent Mr. Fuller for trial for the more serious offence" (i. e. of culpable homicide).

These were strong words ; and the letter containing the Governor-General's views was published in the Gazette of India.

On the 5th August, 1876 the Court sent a letter to the Government of India pointing out that the Governor-General's pronouncement gave rise to important questions concerning the position of the High Court in India and the executive authority of the Governor-General in Council. It argued that it did not lie within the province of the Government of India either to approve or condemn the action of the Court in any matter which fell within the functions committed to the Court, or to instruct a subordinate court on the conduct of its judicial functions ; and it asked that, if the Governor-General in Council were unable to concur in this view, the matter be referred to the Secretary of State for India. This letter was supplemented on the 18th August by a long minute by Sir Robert Stuart. The Chief Justice was clearly deeply disturbed at the stricture on the Court which he considered to be wholly unwarranted, both constitutionally and in fact. He also considered that Mr. Leeds had been unfairly treated[3] ; and he said so. On the constitutional question he was decidedly of opinion that the independence of the High Courts in relation to the Executive Government had been thoroughly established, and that the former enjoyed the same independent authority and prestige as the English Courts. He added, with perhaps some lack of tact, that there were no persons or authorities in India possessed of qualifications which could fit them to supervise or in any way control the High Courts, "for His Excellency and his Council, with one exception, are not, legally and technically, learned persons. " (The exception was Arthur Hobhouse, Q. C. -later Lord Hobhouse, the Law Member).

The Governor-General was unmoved and the matter accordingly went to the secretary of state, Lord Salisbury. He dealt with the issue in two dispatches dated the 22nd March, 1877. In the first he considered the proceedings before the Magistrate; and he upheld the Governor General's censure of Mr. Leeds.[4] In the second he expressed the opinion that the constitutional issue between the Court and the

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[3] "The Governor-General in Council views Mr. Leed's conduct in this case with grave dissatisfaction. He should be so informed and should be severely reprimanded for his great want of judgment and judicial capacity. In the opinion of the Governor-General in Council, Mr. Leeds should not be entrusted, even temporarily, with the independent charge of a district, until he has given proof of better judgment and a more correct appreciation of the duties and responsibilities of Magisterial officers for at least a year."

[4] "The fatal consequence of Mr. Fuller's violence did not, accordingly to Indian law, increase its criminal character; but it did increase most materially the importance of ascertaining the exact nature of the crime committed, not only accurately, but in such a manner that the accuracy of the decision should be generally recognized. Where death has been caused, it is of the utmost

Government did not really arise, for in censuring Mr. Leeds and expressing its regret that the Court did not bring his proceedings under judicial review the Governor-General was dealing with purely executive function which it was his province to control ; and the fact that these functions were partially committed to the High Court did not alter their executive character.

In these circumstances the Secretary of State turned to a consideration of the constitutional issue reluctantly and only because he had been specifically asked by the Court to do so. Her Majesty's Government did not accept the premise on which Sir Robert Stuart's argument was founded-that the Indian High Courts had the same independent authority as the English Courts. And this was so because there was a vital difference between the tenure of English and Indian Judges. Under the Act of Settlement the former held office during good behaviour; under the Indian High Courts Act of 1861 they held office during Her majesty's pleasure. This difference, in the Secretary of State's opinion, was neither accidental nor inoperative; and it followed, in the Government's view, that the right of dismissal carried with it necessarily the right to indicate the conduct which may, if persisted in, incur dismissal. It involved the right to approve or condemn the action of the officer who is so liable to be dismissed. Lord Salisbury recognized that logically this view could justify interference in purely judicial functions, and he concluded his dispatch with these words:

> "But it is not necessary for me to state to you that, as a matter of policy, any executive action trenching on the independence of Judges in the exercise of their purely judicial functions, could only be justified by reasons of extreme necessity. Your Excellency is as deeply impressed as Her Majesty's Government with the importance of maintaining intact that confidence in the impartiality of the law Courts which any interference of the Executive, except under pressure of such reasons, would destroy."

This expression of the Government's view can have given little satisfaction to the Court or its Chief Justice ; and it was not until the Government of India Act of 1935 that legislative provision to secure the full independence of the Judges was made.

Judicial work of the Court

It seems now to be an impossible task to recreate the legal reputation of the judges of the Court in its early days. We can note with pleasure that the first two Chief Justices became Chief Justices of Madras and that the third became Treasurer of Lincoln's Inn. The law reports enshrine the judges' decisions, but it is probably true to say that almost without exception they deal with matters of local importance. How sound were they as expositions of the law. An examination of the records of the Judicial Committee of the Privy Council gives us an answer.

Appeals from judgments of the Court in the period from 1866 to 1876 were decided by the Judicial Committee between 1869 and 1880 ; and what happened to those appeals is shown in the following table :

	Judgements				
Year	Total	Affirmed	Reversed	Varied	remanded
1869-70	6	6			
1871	2	1	1		
1872	5	4	1		
1873	4	2	1	1	
1874	2	2			
1875	2	2			
1876	5	4	1		
1877	1		1		
1878	2	1			1
1879	3	2			1
1880	4	2	2		
	36	26	7	1	2

Comparative figures for the four High Courts during the same period are naturally of interest; they are as follows:

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importance to satisfy the community that impartial justice has been done, and this necessity is specially urgent where the deceased is dependent and helpless and the person causing death belongs to a superior class of society."

Court	Judgements				
	Total	Affirmed	Reversed	Varied	Remanded
Allahabad	36	26	7	1	2
Bombay	16	13	2	1	0
Calcutta	284	171	92	17	4
Madras	43	27	14	1	1

The Law Reports

Between 1866 and 1876 the decisions of the Court were reported in two series of reports. The first to appear was entitled "Reports of the High Court of Judicature for the North-Western Provinces." The editors were pleaders, Munshi Hanuman Pershad and Lala Lalita Pershad, and their reports, in three volumes were in respect of the years 1866-1868, though the last decision reported in the second volume is dated the 31st August, 1867. In 1869 Mr. H. J. Tarrant of the Middle Temple was appointed Official Reporter to the Court, and beginning in that year a new series of reports appeared, called "The North-Western Provinces High Court Reports. " They consist of seven volumes and were in their turn replaced in 1876 by the Allahabad series of the Indian Law Reports. The first four volumes were edited by H. J. Tarrant, the last three by G. T. Apankie of Lincoln’s Inn who had succeeded to the post of Official Reporter. The seventh and last volume reports no case decided after the end of June 1875, and possibly to made good this deficiency the first volume of the I. L. R. series (which is dated 1876-78) contains reports of 7 civil appeals and no less than 15 full bench decision decided in the second half of 1875. In 1870 there also appeared a slender volume entitled "Selected Cases determined by the High Court of Judicature, North-Western Provinces, in its Appellate Jurisdiction. " It consisted of a mere 34 pages, accompanied however by a slip reading "Parts required to complete the old series of Selected Cases will be issued in due course by the publishers. " I have not been able to discover whether any more parts were in fact issued, or what the "Old Series of Selected Cases" really was.