The

Administration of Justice in Ceylon

THE MINISTRY OF JUSTICE

February, 1952

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Issued by THE MINISTRY OF JUSTICE
(Edited by N. E. Weerasooria, Esq., K.C.)

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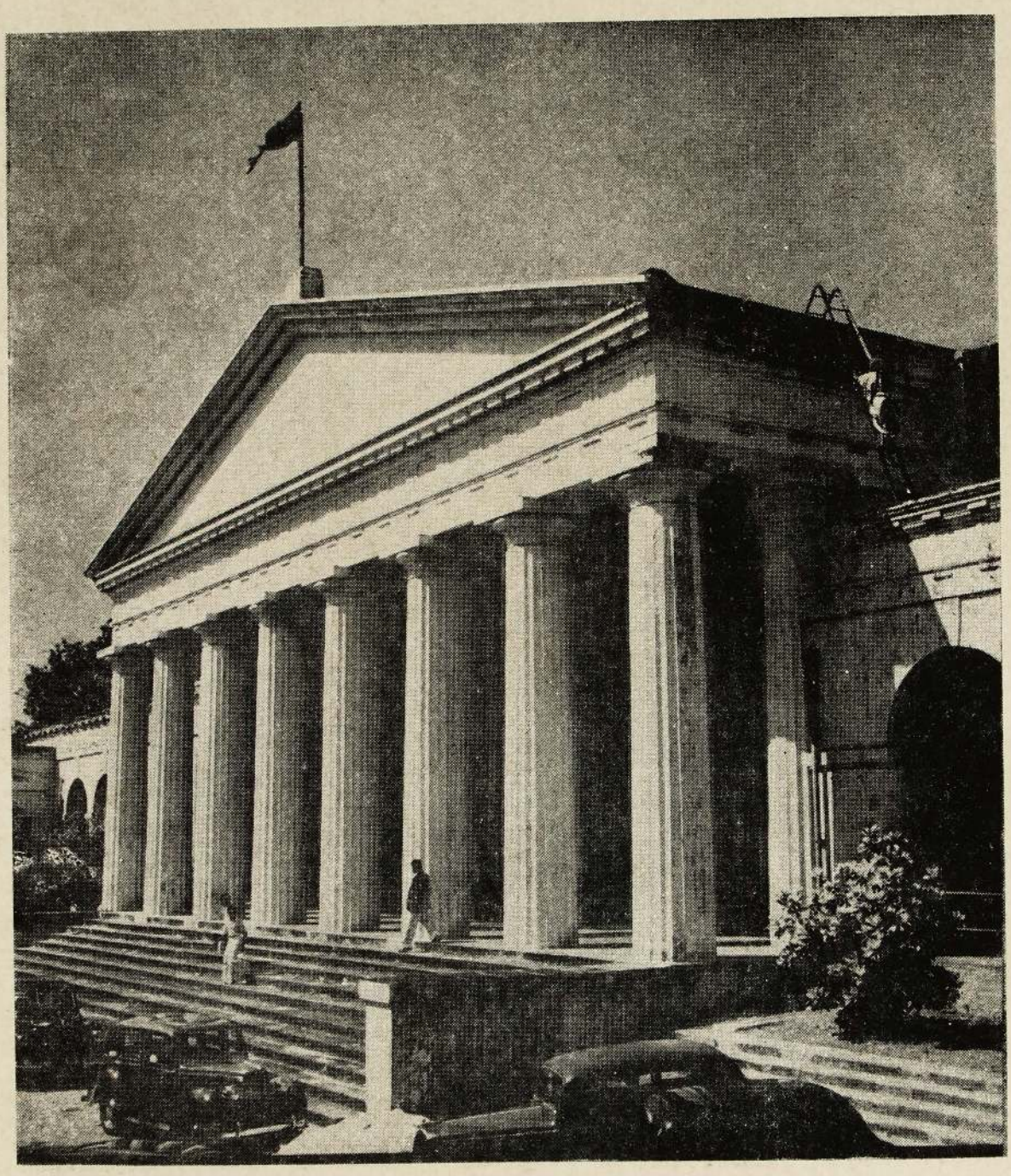


SUPREME COURT EXTERIOR

CHAPTER ONE

HOW THE JUDGES CAME TO HULTSDORF

How the Judges came to Hultsdorf is one of the most interesting episodes in the history of the Courts of the Island. Shortly after the British occupation the Supreme Court was established by Charter in 1801 and it held its sittings in the Fort of Colombo, where the Hoff van Justitiae of the Dutch had sat in a room which is today a part of the Senate House.

The sentences of the Court were carried out in the Parade Ground opposite, now called the Gordon Gardens. At that time punishment was inflicted with much more ceremony and in the presence of spectators. " The ponderous scaffold was hung over in black with companies of soldiers surrounding it and the members of the Court in their full robes were not far away to witness the scene and sign a certificate, which had to be duly enrolled, of the prisoner having undergone the fatal sentence."

The use of the parade ground for punishment by the civil courts appears to have given offence to the Military who looked upon it as their property. In September, 1804, a prisoner by the name of Vary Arumogam was sentenced to corporal punishment which was inflicted on him at the disputed spot. This incident was followed the next morning by a letter from Captain Alexander Barry, the Town Major of Colombo, to the Fiscal, Frederick Baron Mylins, informing him that the Commandant wishes it to be understood that no civil prisoner is to be flogged on the Garrison Parade against which an order had long been issued.

The Fiscal reported the matter to the Court and he was directed to inform the Town Major that the Court was of the view that it had authority to order punishment to be inflicted on the spot when necessary. The Town Major refused to withdraw the order that he had given to the sentries that none but the Military could enter the Ground without a passport from him. A summons was, thereupon, issued by the Court on the Town Major who deposed that he had acted on the orders of the Commandant and " that he conceived the sentries would endeavour accordingly to prevent any but the Military entering."

The Commandant, Colonel Baillie, was then summoned to appear forthwith to answer to the matter stated against him and to be dealt with according to law. The Commandant stated that the ground had been given over by the Governor to General Macdowall for the purpose of a Military parade and had been enclosed and that the sentries had been ordered not to permit any persons other than the Military to cross the Parade and that he (the Commandant) had renewed the order as it had been reported to him that a punishment by the order of the Supreme Court had taken place at the spot. He also stated that the existence of the order was known to General Wemyss, the Commander of the Forces.

The Supreme Court declared the order illegal and directed Colonel Baillie to withdraw the order and on his refusal to do so he was ordered to enter into a recognisance to keep the peace and be of good behaviour which he did.

On the following day the Governor directed the Commandant to countermand the order but at the same time requested the Supreme Court on the ground of inconvenience not to inflict corporal punishments on the Military Parade. The letter written by the Governor to the Judges and his Proclamation were both read in Court and the Commandant was discharged.

These proceedings appear to have caused much dissatisfaction with the Military and the matter was referred to General Wemyss who was then on duty at Chilaw. On September 24, 1804, an order was issued by the Commandant preventing any person going out or

entering the Fort and the barrier gate was shut in consequence. The Chief Justice entered as usual through the South Gate but the other Judges and some of the officers of the Court were unable to enter until the Registrar, Mr. Rose, brought the matter to the notice of the Governor who himself came at once with his suite, had the gates opened and took possession of the keys. In the meantime a mandate had been issued by the Court calling upon Colonel Baillie to appear forthwith. The Colonel appeared in response to the mandate, and put in a letter received by him from General Wemyss, the Commander, and one from Captain Mowbray, Adjutant-General to the Forces, under authority of which he acted. A mandate was then issued to General Wemyss to appear to answer for his conduct and to be dealt with according to law on September 29.

On September 28, Sir Alexander Johnstone, the Advocate-Fiscal delivered to the Court a letter from the Governor stating that it was of the utmost importance that General Wemyss should remain with the Head-quarters at Negombo during the then campaign or elsewhere where his business might call him and requested the Court to defer his appearance until October 15. The application was considered on the following day, when after verification of service of the mandate, the Court directed the General commanding him peremptorily to appear on October 3.

On October 1, the Advocate-Fiscal delivered to Court a letter from Mr. Plasket the Secretary to the Council enclosing a minute of the Council with a letter addressed to him by the Governor and moved for a Commission to take the affidavit of the General on the ground that his presence in Colombo on October 3, would be detrimental to His Majesty's Service. This application was also refused and the minute of the Court reads, " It was declared by the Court that the Advocate-Fiscal do take nothing in the matter."

On the 3rd October, the Court met and General Wemyss the Commander of the Forces and Lieutenant-Governor of the Island appeared. He was surrounded by the officers of the Garrison, and the Court House, the grounds round it and the Parade Ground

were filled with soldiers. From their loud talking and gestures a disturbance was apprehended, when the Chief Justice inquired of the General what was meant by so unusual an assemblage adding that if it was intended to intimidate the Judges not all the guns of the Garrison levelled at their Lordships would have that effect. The Commander disclaimed any such intention and orders were forthwith given to the soldiers to disperse and keep the peace. The crier of the Court was directed to proclaim the order that no one was to remain in the Court premises with their swords or bayonets, and this order was forthwith enforced even in the case of the General and his suite.

Depositions were then taken of Mr. Plasket who produced the Commission and Instructions of the Governor which were read in Court—as also 41. Geo 3 Cap. 11, Sections 8, 9 and 10, Section 11 of the Articles of War and Sec. 73 and 95 of the Charter.

General Wemyss being called upon to make answer to the matters charged in the depositions produced his Commission as Lieutenant-Governor and as Commander of the Forces. He was then examined, when he admitted having issued the order and stated, among other matters, that spies were lurking in the precincts of the Fort and that the patrols were ordered to apprehend such as they could find. He was then called upon to show cause why he should not enter into a recognizance to keep the peace and to be of good behaviour for one year and to appear to any libel that should be allowed against him and signed by the Advocate-Fiscal. General Wemyss with vehemence objected to give recognizance and protested against his being called upon to do so. The Chief Justice then informed him that it would be the duty of the Judges to enforce an order by charging the Fiscal upon a committal to take his body in custody until he should comply with the order of Court requiring such recognizance, the amount named being Rds. 100,000. General Wemyss then entered into and acknowledged the recognizance and was discharged.

On December 17, the General lodged a complaint before the Magistrate, Mr. Farrell, against Sir Alexander Johnstone that

Sir Alexander had challenged the General to fight a duel and that he should be bound over in surety to keep the peace. The General appeared before the Court and swore that he had received the challenge but the Court after examination of witnesses found that no " challenge was sent and that there was no sufficient cause why the said Sir Alexander Johnstone should be bound by recognizance to keep the peace."

Two days after the closing of the Fort Gates the Judges received the following letter from the Governor :—

To My Lords

The Chief and Puisne Justices of the Supreme Court.

My Lords,

In addition to the various inconveniences which must attend your Lordships' permanent residence in the crowded garrison, I have the honour to inform you that I expect in a very short time the arrival of a regiment of Negroes from the West Indies, whose habits of life are so little known, and probably so little analogous to that of the natives of this Island, that it is equally desirable for the department over which you so worthily preside, as for their own discipline, that they should be quartered within the fort.

And as the Government house which I have offered for that purpose cannot be rendered habitable, I am compelled to request your Lordships to give up the buildings you now occupy as soon as you can conveniently remove.

In fixing your new residence without the Fort, your Lordships may be assured that I shall be happy to comply with your wishes and to approve the high esteem with which I have the honour to be, my Lords

Your Lordships' Most Obedient faithful servant,

Sgd. FREDERIC NORTH.

Colombo, September 26th 1804.

It was in this way that the Judges came to Hultsdorf. The narrative affords ample proof that the independence of the judiciary and the supremacy of the law were well accepted even at that distant date and it is that tradition that our legal institutions have now maintained for nearly one hundred and fifty years and will, it is hoped, maintain in years to come.

A description of Hultsdorf as it stood, nearly sixty years ago, appears in Rev. James Cordiner's book on Ceylon published in 1807 —

" From this house he (Governor Sir Frederick North) removed to Hulftsdorff, a villa about one mile east of the Fort. It afforded ample accommodation for himself and a numerous family of friends, as well as every convenience that was requisite for the largest and most splendid entertainments. The situation, however, was by no means favourable. It was shut up by thickets of jak and jamboo trees, which deprived it of the benefit of the sea-breeze ; and it had no prospect but a confined view of a valley of paddy fields, sometimes overflowed with water, and mountains of Adam's Peak seen through an opening of a deeply shaded and luxuriant avenue. The back verandah is perhaps the most spacious hall of the kind to be seen in India, being upwards of one hundred and fifty feet in length, and so broad that a coach might be driven through it with perfect ease. This was a place allotted for dancing to render which amusement more agreeable, two stages formed of elastic boards were raised about one foot or eighteen inches above the stone floor and railed to prevent accidents. The extensive range of lofty pillars was decorated with a rich covering of coconut leaves of pale-yellow and dark-green colours, disposed in alternate succession. The white cotton roof and the side wall were ornamented with beautiful moss and illuminated with beautiful lamps ; rows of which were likewise hung at a distance from the house on the surrounding trees, and gave the scene the appearance of a vast amphitheatre, equally novel and enchanting. In a long verandah on the

opposite side of the house, and under three ornamental sheds projecting from the centre, and each end of it, supper tables were laid ; and three hundred guests frequently sat down to a sumptuous and animated entertainment. The inner apartments of the house were on these occasions thrown open : provided with card-tables, and appropriated to the pleasure and convenience of the company . . . . This house afterwards accommodated two families, those of the agent of revenue and the chaplain to Government and Mr. North then inhabited St. Sebastian's, a less splendid mansion, in a more eligible situation."

CHAPTER TWO

LEGAL SYSTEMS

SEVERAL legal systems, loosely knit, are in force in the island and one who is not acquainted with its laws would find it no easy task to understand them. Some of these laws are no other than the ancient customs which have in course of time acquired the force of law while others have been introduced at different periods by legislation to meet the exigencies of the case.

The Maritime Provinces which were then under the rule of the Dutch capitulated to the British in 1796 and the Kandyan Provinces which were more or less independent were ceded in 1815. The Convention of 1815 saved to all classes of people their civil rights and immunities according to the laws, institutions and customs established and in force among them. The Roman-Dutch Law remained the law applicable to the Maritime Provinces and the Kandyan Provinces continued to be bound by the customs then in force.

In 1806 a Proclamation was passed according to which the " Thesavalamai " or the customs of the Malabar inhabitants of the Province of Jaffna as collected in 1706 were to remain in force as among the Malabar inhabitants of that Province. Trincomalee and Batticaloa were excluded from this area and to these two districts the Roman-Dutch Law applied. The provisions of the Thesavalamai have since been considerably modified by legislation.

The Mohammedan Law that was in force in Ceylon is that contained in the Code adopted in 1806. What is not in that or

subsequent enactments is determined by law and custom. Where no special principle is applicable, recourse as in other cases is had to the Roman-Dutch Law which is the Common Law of the land.

The ancient systems of law have not undergone any natural development and the tendency has been to call the English Law in aid for the solution of new problems, and English forms of practice and procedure as well as substantive law have from time to time been adopted on a somewhat large scale by legislation.

The constitutional changes which the country underwent on its road from Crown Colony to Independence have been marked by the advent of social legislation. The establishment of the State Council based on adult franchise under the Donoughmore Constitution (1931) followed by the Soulbury Constitution (1947) and the grant of the Independence (1948) brought with them a series of Ordinances and Acts designed to improve the social and economic conditions of the people. In this respect Ceylon has escaped the trials which normally preceded such reforms in other lands and gathered early the fruits of their successful experiments.

In the result the laws of Ceylon are a mixture of customary law, local statute law and the laws of other countries introduced by legislation. No attempt has been made at a consolidation of the legal system or of judicial precedent. The task would, no doubt, be difficult, but the plea which has been recently urged for a restatement of the law is one well worthy of consideration. Such a restatement can be made the foundation on which to build future law reforms and bring the existing legal system into conformity with modern trends of thought and the needs of the new status of the Island.

CHAPTER THREE

THE COURTS OF THE ISLAND

AFTER a century of British administration it was inevitable that there should be ingrained in our legal system much of the strength and weakness of the English scheme. Some features which thrived and flourished in a temperate climate were adopted equally successfully under the tropical sun in Ceylon but in the case of some others the adaptation was not quite so successful. The presumption of innocence which is regarded as the golden thread that runs through the English Law is a valuable safeguard in Ceylon while trial by jury claimed by Englishmen as a proud inheritance from the Magna Carta was introduced here in spite of the absence of the historical associations. Principles of colonialism still survive but the time is perhaps not far distant when those which are of no real value here will be swept away. The droit administratif looked upon with grave misgiving by constitutionalists like Dicey and Allen are now a well accepted feature in England and in Ceylon too administrative tribunals are looked upon as an effective means of dealing with matters which require expeditious and summary treatment.

At the apex of the legal pyramid there still stands the Judicial Committee of the Privy Council, the august tribunal of Downing Street, whose wisdom and mature experience Ceylon still relies on. Many countries that have attained the status of Dominions have cut out the appeal to the King in Council but in Ceylon no effort has been made to remove this invaluable link which has made so striking a contribution to our legal literature and jurisprudence.

SUPREME COURT SCENE

In fact in recent years, with the narrowing of distances, there has been greater resort to this tribunal in which the greatest legal minds in England help in the solution of our own difficult and complicated legal problems. In accordance with well defined principles which the Judicial Committee has laid down it is only in cases of grave error that it interferes in criminal cases but in civil cases except for a slight monetary limit it deals with all cases in which a petition is presented to it.

The Supreme Court in Ceylon exercises a dual role in the administration of justice. In civil cases it exercises an appellate jurisdiction similar to that of the Court of Appeal in England. Any party aggrieved by a judgment or order of a District Judge or subject to certain limitations of a Commissioner of Requests has a right to appeal to the Supreme Court against the order. Appeals from District Courts are heard by two judges of the Supreme Court while one judge hears appeals from a Court of Requests. When there is a disagreement or when some matter of importance has been raised there is provision for the appointment of a Divisional Bench or a Full Court to hear the case. Following the English practice with regard to precedent, judges of the Supreme Court are bound by the judgments of the Judicial Committee of the Privy Council, while a single judge is bound by a judgment of a bench of two judges.

In criminal cases the Supreme Court has and exercises two separate jurisdictions. In the first place it exercises an original jurisdiction for the inquiry of all crimes and offences for which indictments or informations are presented to the Supreme Court, this being trial by jury except in the very exceptional case when trial at bar is permitted before three judges of the Supreme Court and secondly the Supreme Court exercises an appellate jurisdiction for the correction of all errors in cases which have been tried in District Courts or Magistrates' Courts which are empowered to try them.

For the purpose of the original criminal jurisdiction which the Supreme Court exercises the island has been divided into five circuits and Assizes are held in the important towns which belong to these circuits.

Until quite recently except for the right of appeal to the King in Council or a case stated to the Supreme Court on the fiat of the Attorney-General, a decision at the Assizes was final and a person convicted had no right of appeal but recently there was introduced into Ceylon the Court of Criminal Appeal which is very closely modelled on the Court of Criminal Appeal in England to which a person convicted at the Assizes may appeal on any point of law or with the consent of the trial judge or of the Court of Criminal Appeal on the facts in the case. These rights have been very freely exercised and there has been in consequence the clarification of many points of the criminal law on which there had been no considered pronouncements earlier. The Court of Criminal Appeal is composed of three judges of the Supreme Court sitting together but there have been instances where fuller courts have considered points of difficulty.

The Supreme Court is composed of the Chief Justice and eight Puisne Justices appointed by the Governor-General on the advice of the Prime Minister, the Chief Justice being primus inter pares. Judges retire at 62 but may be granted permission to carry on for one extra year.

The Supreme Court is also empowered to issue writs for the purpose of controlling or correcting inferior tribunals and also for the purpose of compelling the performance of duties by executive officers. In recent years in view of the increase of governmental activity there has been a marked increase in this sphere and hardly a week passes without the Supreme Court being called upon to act in these matters. It also grants the writ of habeas corpus which is a very important safeguard to the freedom of the subject.

An " outstanding feature of the Ceylon judicial system is the fact that the jurisdiction of the Supreme Court in civil cases is almost exclusively appellate, and that the jurisdiction of the District Court in civil matters is unlimited ". The District Courts are courts of record having original jurisdiction in all civil, matrimonial, insolvency and testamentary matters ; they also have jurisdiction over the persons and estates of lunatics, minors and wards, over

the estates of cestuis que trust, and over guardians and trustees. By the very nature of their jurisdiction these Courts roughly correspond on the civil side to all the Divisions of the English High Courts. The Judicial Commission in 1936 observed that " a District Court is what in other jurisdictions would be called a High Court, since it has complete jurisdiction in the first instance, and Ceylon has in fact a number of High Courts, one for each district." On the criminal side their jurisdiction is limited to those offences which are not serious enough to be tried on indictment by the Supreme Court and too serious to be tried summarily in a Magistrate's Court. But they have full power to try all offences whatsoever against the revenue laws of the Island.

The civil cases are much the most important part of the work of the District Court and it is significant that as there has been no division of work as there is in England, judges are called upon to deal with problems that arise in all varied branches of the civil law. In Colombo there has been an allocation of work between the four District Courts which function, but in other parts of the country all questions may arise as part of the day's work and a judge may have an acrimoniously contested divorce case, a running down case and complicated partition action, all as part of his day's work. Land litigation is still the main feature of the Courts, for the country is not as yet industrialised sufficiently for this bias to change. Recent legislation has made endeavours to prevent the fragmentation of land and to limit disputes with regard to title but the results of these steps are not yet visible.

Cases of under Rs. 300 value are tried in the Court of Requests where the procedure is more summary and expeditious. There is a great deal of work in these courts where petty debts and disputes between landlords and tenants are often strenuously contested.

The Magistrates' Courts have two tasks to perform, for here petty offences are summarily tried and dealt with or the Magistrate after inquiring into some grave offence commits the accused person to the Supreme Court or the District Court if he is satisfied that there is some prima facie evidence against him. In former times the

power of committal was vested in the Attorney-General but this has now been conferred on Magistrates who can commit or discharge in their discretion the power being reserved to the Attorney-General to re-open proceedings in case of a discharge or to discharge a person after he has been committed for trial by the Magistrate.

In a country in which the crime statistics are fairly high these Courts play an important part in the administration of justice.

Reference should also be made to the Rural Courts where justice is administered between man and man without legal aids by trained lawyers in a somewhat patriarchal fashion The Presidents of these Courts are expected in the first instance to inquire into the root cause of any dispute that may come up before the Court, without limiting itself to the immediate issues before it, and to endeavour to bring about a reconciliation between the parties. Only on failure to reconcile the parties and to bring about goodwill among them that Presidents are expected to try a case. Rural Courts are a development of the ancient Gansabawas or Panchayats where the elders of a village sat under the shade of a large tree or in a building used as a resting place for travellers and heard the disputes between their fellow villagers and bringing their local knowledge to bear on these disputes effected amicable settlements. Small matters in issue or trifling offences are dealt with in a summary way and help to prevent serious breaches of the peace developing in the life of the community. There has been a recognition of the value of this assistance and every effort is now made to provide this relief as effectively and efficiently as possible. Appeals from the decisions of Presidents, Rural Courts, are considered and decided by District Judges.

Administrative Tribunals have also come to stay for they are being established increasingly in many spheres of activity where some summary kind of procedure is required for the purpose of dealing with rights of the subject. Very important and valuable questions are often dealt with by these boards and tribunals, sometimes questions of graver import than are dealt with by Courts of Law, and the parties are bound to accept the decision of the tribunal unless they are able to show some important or grave breach of

legal procedure by resort to some writ which the Supreme Court is empowered to issue. These tribunals are not completely unfettered but they do exercise very wide powers in a summary fashion and when they are properly developed and those selected to serve on them are appointed with a due sense of responsibility they will play a very important part in the legal scheme for they deal with matters which are daily becoming more and more important under modern conditions.

CHAPTER FOUR

LAW COURTS IN CEYLON IN THE TIME OF THE DUTCH

THE following article was written by Sir Charles Marshall (Chief Justice, 1833–38) :—

To begin with the Courts of inferior jurisdiction, the Fiscal, who it will be recollected, corresponded in the Dutch time to the Advocate Fiscal (now Attorney-General) rather than to the Fiscal of the present day, exercised a civil jurisdiction in cases of small debts, not exceeding Rds 100 over all descriptions of persons, Europeans as well as natives within the Fort and Pettah. One of these officers was established at Colombo, another at Galle and a third at Jaffna. The Dissave or Commissioner of Revenue who was, I understand always a European, had similar jurisdiction beyond the Fort and Pettah.

These were neither of them Courts of Record, the proceedings were not committed to writing and the only way of enforcing the performance of their decrees was by sentencing the party condemned to eight days imprisonment, if he neglected to pay the sum awarded. No costs whatever were payable.

The Fiscal had also criminal jurisdiction in assaults and other petty cases over all persons throughout the whole of his district. The judicial powers exercised by these two officers and by the Civil Court, which is about to be mentioned, except as regards the matrimonial jurisdiction of this last, are vested, as we have seen, with many additions in the sitting magistrates of the present day.

It was the Fiscal's duty alone in conjunction with two members of the Court of Justice to inquire into all criminal cases of importance; to take depositions, and if they thought the charge well founded, to refer the case and commit the party accused for trial before the Court of Justice. No bail was ever allowed in such cases ; but this was the less necessary, because the Court of Justice not having to summon a jury, was always ready to hear any case as it presented itself. The Fiscal conducted the prosecution as the Advocate-Fiscal does at the present day.

The Civil Court which was established at Colombo, Galle and Jaffna, had jurisdiction to the extent of Rds 120 over all descriptions of persons throughout the whole district. It also exercised a matrimonial jurisdiction over all Christians whether Europeans or natives. Persons desirous of marrying were obliged to register their banns in this Court, but if any impediment occurred, the matter was not discussed here, but was at once referred to the Court of Justice for decision. The Civil Court was composed of a member of Council as President, one merchant, a Captain and a Lieutenant of the Burghers (who formed a sort of militia) and a few sworn clerks of the Dutch East India Company ; the number of members including the President being usually eight.

The Landraad was established at Colombo, Calpentyn, Jaffna, Trincomaliee, Batticaloa, Matara and Galle, and exercised civil jurisdiction over natives in cases relating to land, unlimited in amount both as to maximum and minimum exclusively without the gravets and concurrently with the Court of Justice and also with the Civil Court to the amount of Rds 120 within those limits. This jurisdiction was originally confined to questions affecting landed property ; but by a proclamation of Governor Van Gollnesse about 1742 confirmed by Governor Falck in 1765, this jurisdiction was extended to all civil cases within the District of Colombo. The Landraad was held by the Dissave or Commissioner of Revenue as President and the Fiscal as Vice-President. The other members were the Thombu holder, the chief surveyor and one or two book-keepers of the Company, all Europeans, and two native members, viz., the Maha or Chief Mudaliyar and the first Atapattu Mudaliyar

who was the Mudaliyar of the Dissave. Five members were necessary to compose a Court. The Landraad Courts are now represented by the Provincial Courts.

The Court of Justice was the highest Court of Judicature and was established at Colombo, Galle and Jaffna. It possessed jurisdiction unlimited in amount throughout the whole of the district over the Company's servants and Burghers exclusively, and, concurrently with the Landraad, over natives within the gravets of each place. This Court had also criminal jurisdiction over the whole district over all descriptions of persons without distinction. It also exercised a testamentary jurisdiction as far as related to proving wills and as has been just stated, a matrimonial jurisdiction in all matters referred to it by the Civil Court. These Courts were composed of about eight or nine members, including the President which office was filled by the Chief Administrator of the Government, answering to the Lieutenant-Governor of the present day, who was also first member of Council. The other members consisted of the Fiscal, the Auditor of the Accounts of the Company's trade, two or three Captains or Lieutenants of the army selected for their intelligence the Cash-keeper of the Company and the second Civil Paymaster. It was not considered necessary that either the President or any of the members even the Fiscal should have had a legal education though that sometimes happened.

To the Court of Justice of each district an appeal lay both from the Civil Court and the Landraad of that district, and from the Courts of Justice at Galle and Jaffna to that of Colombo, from which an ultimate appeal lay in cases exceeding Rds 300 to the High Court of Justice at Batavia. From the decision of that Court, there was strictly speaking no appeal, but the dissatisfied party might obtain a rehearing by petitioning the Governor of Batavia.

CHAPTER FIVE

THE CHIEF JUSTICES OF CEYLON

ALMOST exactly 150 years ago, the Supreme Court of Judicature of Ceylon was formally opened with Codrington Edmund Carrington as the first Chief Justice. Carrington was an English barrister practising in Calcutta and was counsel to the East India Company. In 1799 he happened to be paying a visit to Ceylon and the Chief Justice of Bengal had written to Frederick North, the first British Governor of Ceylon, that Carrington's services might be engaged to draft a Charter of Justice. North consulted the Secretary of State and commissioned Carrington.

A document in the Colonial Office in London has the entry : " Strong recommendation of Mr. Carrington by the Governor-General (Lord Mornington) and Sir J. Anstruther (Chief Justice of Bengal). Offers him the place of Judge which he for the present declines. Has undertaken to delay his return to England for the purpose of examining the jurisprudence prevailing in Ceylon and pointing out alterations conducive to justice and analogous to the temper, habits and opinions, of the different classes of inhabitants. Has offered him 750 Pas. per m., which it is thought will not be thought extravagant. When the work shall be so far completed as to be laid before the Govr. Gen. in Council, he means, under his Lordship's approbation, to exercise the power vested in him by the King, of naming Judges and to offer to Mr. Carrington such principal law office as it may then appear necessary to establish ".

Carrington left for England where he had talks with Dundas, the Secretary of State, and returned to Ceylon as the Island's first Chief Justice.

FIRST PUISNE JUDGE

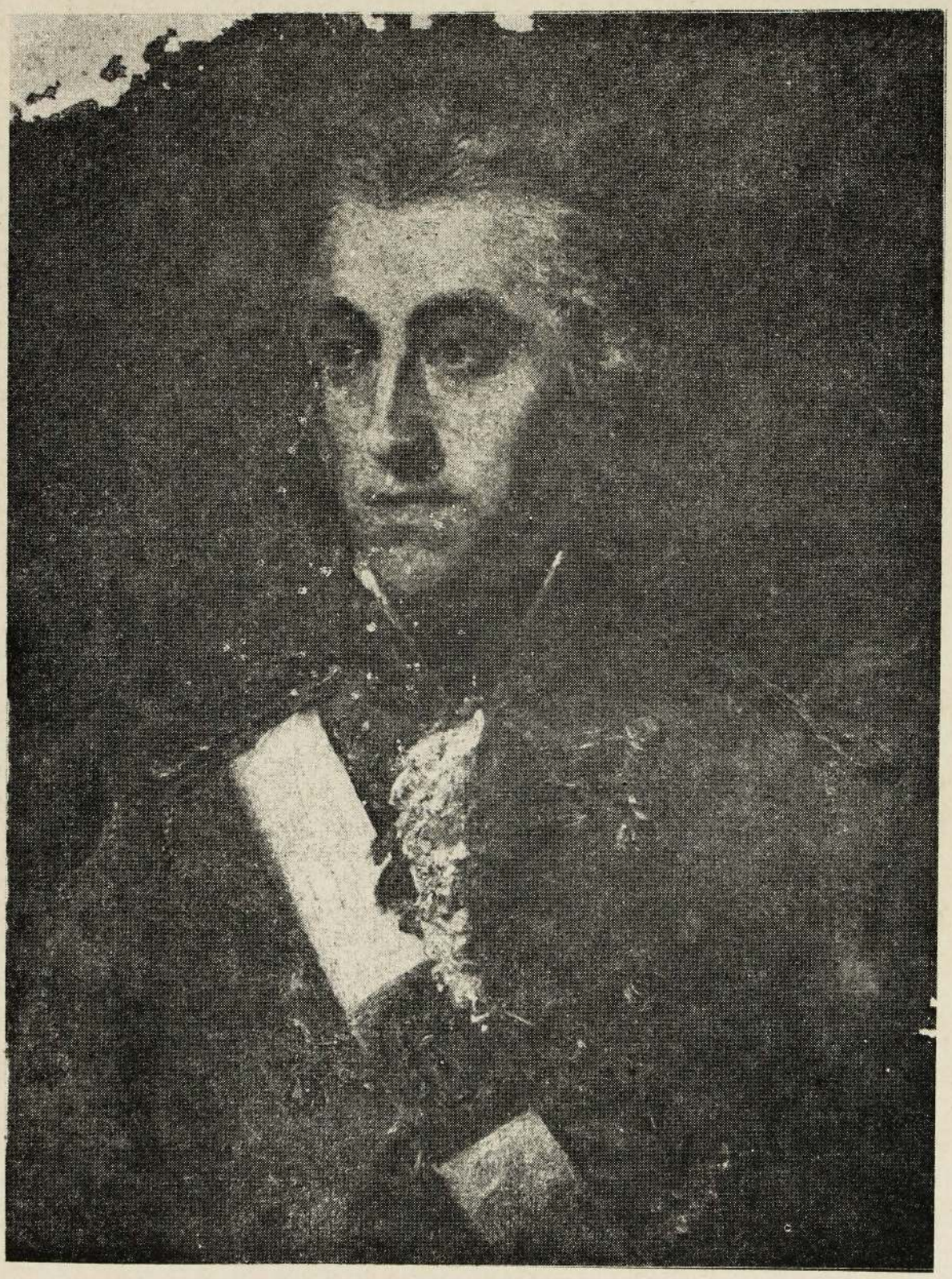
Governor North wrote to the Secretary of State : " In the notes on the Draft of Mr. Carrington's Commission, I submitted some reason for thinking that there should be a Second Judge of the Supreme Court. I continue strongly impressed with the same opinion ". Edmund Henry Lushington, also an English barrister, was appointed Puisne Judge. The Chief Justice was paid £. 5,000 and the Puisne Justice £. 3,000. Sir Alexander Johnstone, who figured prominently in the public life of Ceylon in later years, was appointed Advocate-Fiscal in the same year (1802). The holder of this office was known in later years as the Queen's Advocate, and still later as the Attorney-General.

Sir Edmund Carrington retired owing to ill-health four years after his appointment and was afterwards a Member of Parliament. He died in 1819. Lady Carrington was reputed to be the handsomest woman of the day in the Island. She was of Italian origin, being a daughter of J. Belli of the Bengal Civil Service, Secretary to Sir Warren Hastings. Her portrait, by Lawrence, is in the South Kensington Museum. The oil painting of Sir Edmund in the Law Library was gifted by his grand daughter, the Countess Martinengo Cesaresco.

Edmund Henry Lushington, the first Puisne Justice left a manuscript, " Trials at Colombo 1803–9 " which was offered for sale by Francis Edwards, the London bookseller, in 1931. The painting of Lushington in the Law Library was presented by his son, Sir F. Lushington, who was Magistrate at Bow Street, London. Lushington was Puisne Justice for three years and acted as Chief Justice in 1805.

SIR ALEXANDER JOHNSTONE

Sir Alexander Johnstone, who has already been mentioned, was born in 1775 and came to Madras as a boy with his father, Samuel Johnston, who held a civil appointment in the Presidency of Madras



SIR ALEXANDER JOHNSTONE

under the Government of Lord Macartney. Returning to Europe for his studies he was called to the Bar and in 1802 accepted the post of Advocate-Fiscal of Ceylon. In 1806 he was appointed provisional Chief Justice, subsequently permanent Puisne Justice (1807) and in 1811 Chief Justice and President of His Majesty's Council. Johnstone was greatly interested in the welfare of the people, and while he was provisional Chief Justice he made a circuit through every part of the Island " for the purpose of obtaining accurate local information upon every subject connected with the interests of the Island." At his request the Governor, Sir Thomas Maitland, directed Lieutenant-Engineer G. Schneider to report upon the state of cultivation in various districts. Johnstone suggested to the Governor various measures as necessary to improve the condition of the people and the agriculture of the country. Maitland officially despatched Johnstone to England to lay before the Ministers his reasons for the measures he proposed. Johnstone returned to Ceylon in 1811, bringing with him the Charter of 6th August 1810, by which Trial by Jury was introduced to Ceylon. Ceylon can proudly claim to be the first Asian country to introduce the system of trial by jury in serious criminal cases. He retired in 1818 and was made a Member of the Privy Council. There is a picture in the Law Library of the scene in the Supreme Court when the charter was promulgated in which all races of the Island were depicted.

HARDING GIFFORD

Sir Alexander Johnstone was succeeded by Sir Ambrose Harding Gifford, whose nephew, Sir Harding Gifford, became the famous Lord Halsbury, Lord Chancellor of England. Ambrose Harding Gifford was the son of John Gifford, High Sheriff of Dublin and came to Ceylon in 1810 and was appointed Advocate's Fiscal the next year, and Chief Justice in 1819.

Professor R. W. Lee has written of him : " One is struck by the astonishing ability with which he handled the intricate questions which came before him at a time when the fortunes of the Island were hanging in the balance, and when the old members of ths Dutch Bar had many of them left the country, when the traditions

of the eighteenth century were obscured and half forgotten. Sir Harding Gifford called to mind the traditions of the past. He laid the firm foundations of the system of law which every Chief Justice after him has developed." A selection of his poems was published in Ceylon in 1822. His health failed and on his way to England on leave in 1827 he died at sea. Lord Halsbury presented his uncle's portrait to the Law Library.

Sir Harding did not get on well with Governor Sir Edward Barnes, a Waterloo hero in whose regime the military element predominated. It is said that, with a view to avenging what they regarded as a slight on the Governor cast by the Chief Justice, Sir Edward's military friends erected trap bridges near Kandy, hearing that the Chief Justice was travelling up. Their plans miscarried when the Chief took a different route. Gifford's successor was Sir Richard Ottley. He held the office from 1827 to 1833.

"EQUITY" MARSHALL

In 1833 the Legislative Council was established and a new Charter of Justice was proclaimed on the 31st of July. Sir Charles Marshall, the Advocate-Fiscal, was sworn in as Chief Justice. As was the practice of the day, the Chief Justice was the legal member of the Governor's Council, and many of the ordinances bore the evidence of the master-hand of Sir Charles.

He was generally known as " Equity " Marshall because there was another Marshall, the Auditor-General. H. A. Marshall, a brilliant man, was called " Iniquity " Marshall for no reason other than that of distinguishing him from the Chief Justice. When Ordinance No. 2 of 1835 was passing through the Legislative Council Sir John Wilson, then Major-General , moved an amendment with a view to adding Ruanwella, a small military station at the time, to the stations (Colombo, Galle, Matara, Trincomalee, Jaffna and Kandy) in which, though unfenced, stray cattle could be seized. He was seconded by old " Iniquity." Sir Robert Horton, the Governor, and Mr. Anstruther, the Lieutenant Governor, strongly opposed the change, on the ground that Ruanwella was too small a station

to be included. Sir John Wilson moved his amendment on a day when Sir Charles Marshall was absent, and he commented upon a judgment of the Supreme Court which placed the military authorities, as Sir John fancied, in a dilemma. Carried away as he was with the notion that every class and locality in the Island received consideration save the fortified and military places, and supported by " Iniquity ", who seemed to delight in being mischievous, he preserved in what he doubtless regarded as an exposure of the Supreme Court. At the next meeting of the Council, Sir Charles attended, but Sir John was absent. In establishing the infallibility of legal tribunals the Chief Justice seemed to have used unparliamentary language. The speech was delivered on December 29 and on the 7th of January a letter appeared in " The Colombo Observer " from Captain Macready of the 30th Regiment (Sir John Wilson's Military Secretary and friend) stating, for general information, that Sir John Wilson " had received full satisfaction from Sir Charles Marshall for the expressions, personally offensive, delivered in the Legislative Council on the 29th ultimo and published in your number 48 of the 5th instant."

The full satisfaction, says the historian of the period, was rendered in the Cinnamon Gardens on the 6th, somewhere half-way between Sir John's residence at Kalutara and Sir Charles's residence at Mount Lavinia. " It was said that the judge received his adversary's fire, himself firing in the air, and that, after doing so, he apologised for the words used by him. The unfortunate affair cost Sir Charles Marshall dearly. He left Ceylon shortly after, and it is said that he was bowed out of the Colonial Office when he went to apply for his pension, so that the best and most hardworking judge, Ceylon ever had, whose name is a household word in the profession, is the only judge who retired from the Ceylon service without receiving a pension."

He was the author of a series of reports known as " Marshall's Judgments." Marshall was succeeded by Sir William Rough, Sergeant-at-Law. He died at Nuwara Eliya aged 64.

Sir Anthony Oliphant was Chief Justice from 1840 to 1854. It is remarkable that though he held this office longer than any

other judge except Sir Edward Creasy very little is known about him outside his contributions, such as they are, to the law reports of the Island. During his term of office there practised before the Supreme Court some of the most famous of Ceylon lawyers, men like Richard Morgan, C. A. Lorensz, Harry Dias, and James Stewart. Oliphant's son, Lawrence Oliphant, who was his Private Secretary for a time, was perhaps better known to later generations than the Chief Justice. He was a close friend of Richard Morgan, and made a name as a writer, a " Times " Correspondent and a diplomatist.

Ceylon's next Chief Justice was Sir William Ogle Carr. He was Puisne Justice for 18 years and Chief Justice for one year.

Carr's successor was Sir W. Carpenter Rowe. He held the office for 11 months and died a few months after his retirement.

SIR RICHARD MORGAN

The career of Sir Richard Morgan should more properly be discussed under the head of distinguished lawyers than of a judge. But it may be recorded here that, when Sir Richard was acting as Chief Justice, he received the following letter from the Governor, Sir William Gregory :—

" My dear Sir Richard.—It gives me great pleasure to inform you that I have received a telegram from Lord Carnarvon, empowering me to offer you the Chief Justiceship of this colony. It is most gratifying to my feelings that your long, loyal and invaluable services are thus recognised by Her Majesty's Government, and that effect has been given to my urgent ' recommendation ' ". Sir Richard had to decline the offer and the Governor telegraphed back to the Secretary of State : " Sir Richard Morgan declines on the score of health, with grateful thanks, the appointment of Chief Justice ".

Sir Richard Morgan has left an interesting account of the preparation for a circuit in Jaffna. It was written by him as a guide for Sir Edward Creasy, the Chief Justice, when he first went on the northern circuit. The journey was of course made

by palanquin. " Thirteen coolies are wanted for a palanquin, that is two sets of six carriers each and a head or peria-boy ". The following is a Memo of the articles required, for the journey and at Jaffna : " 1 dozen sherry ; 1 dozen champagne ; 1 dozen claret ; 2 dozen beer ; 1 dozen porter ; 4 bottles port wine ; 2 bottles brandy ; 3 bottles tart fruit ; 3 half pints sauce ; 1 pint salad oil ; 2 tins salmon ; 2 tins carrots ; 1 bottle mustard ; 2 bottles pickles ; 1 ham ; 1 tin flour ; 1 lb. macaroni ; 1 lb. vermicelli ; 1 jar raspberry jam ; 1 loaf sugar ; 2 lb. mixed tea ; 4 measures coffee, in bean ; 6 lb. candles ; 4 dozen soda ; 4 dozen lemonade ".

There was no lack of poultry, eggs, milk and game on the way. Some of the Judges used to travel with torch-bearers provided for them all the way, tom-tom beaters preceding them and fresh relays of labourers at each station to help them on.

SIR EDWARD CREASY

Sir Edward Creasy was Chief Justice of Ceylon for seventeen years between 1860 and 1877. He was the author of " Fifteen Decisive Battles of the World " which had made a literary reputation for him before he came to Ceylon. He had many other books to his credit. " It could not be said that he was a great lawyer or a great judge, and in his later years continued ill health impaired his usefulness and he devoted the greater part of his time in the Island to literary work. As an orator and public speaker however he was unequalled. Of massive frame and striking appearance he used to hold his audience spell-bound as he poured out his sentences in the choicest language ' fitting aptest words to things' in a voice that rang through the hall and could be heard, clearly and distinctly, in the remotest corner ".

There was a spirited debate in the Legislative Council over Sir Edward's pension. The Earl of Carnarvon, the Secretary of State, was his personal friend and recommended a pension which the unofficial members of the Council thought was excessive. In the

end the Council sanctioned it but deleted the words " the high character of the services rendered to the colony by the said Sir Edward Creasy " from the motion.

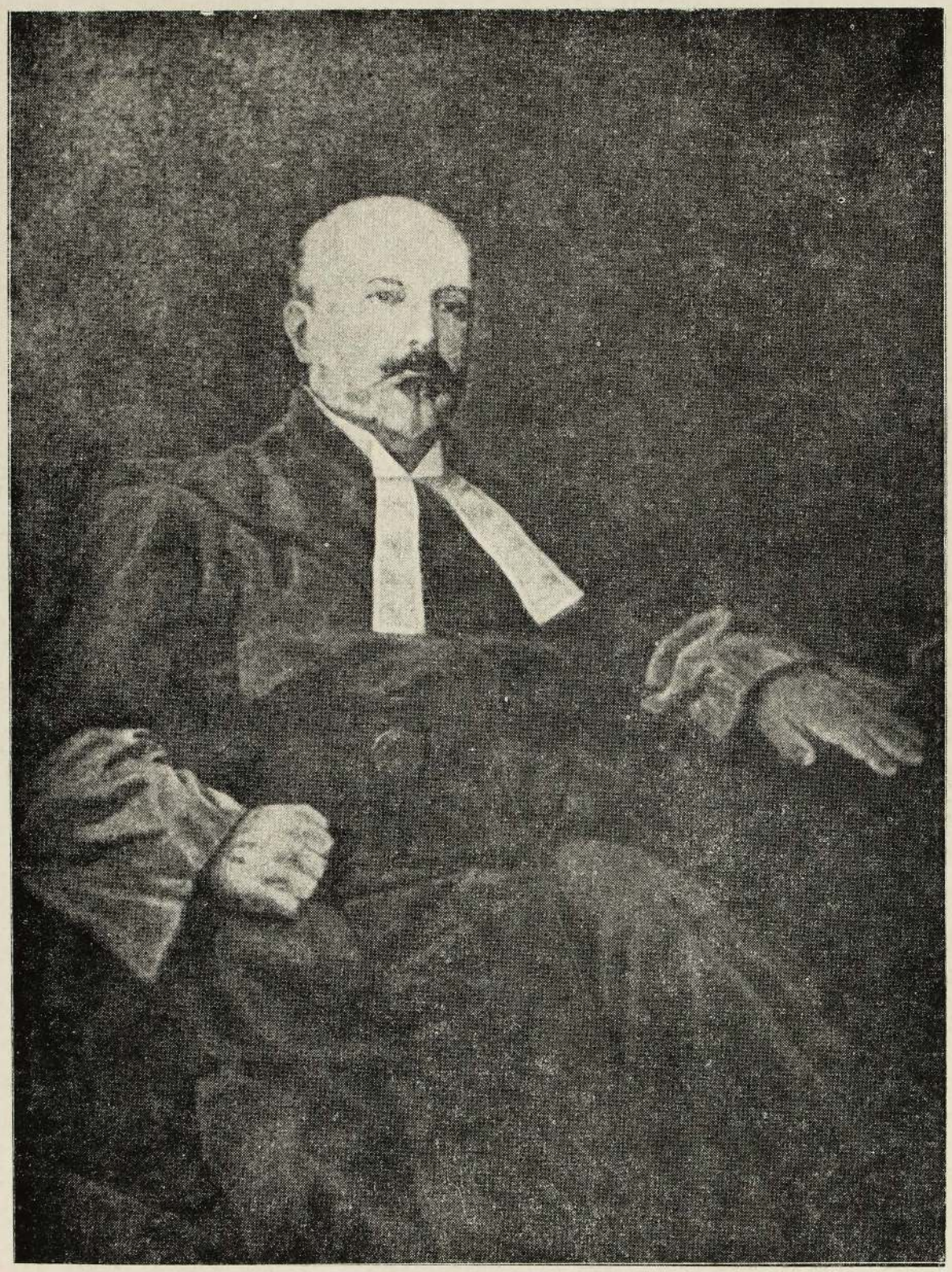
SIR JOHN BUDD PHEAR

Sir William Hackett who had a long record of Colonial Service was appointed Chief Justice in 1877. He died of cholera three months later. He was succeeded by one of the great Chief Justices Ceylon has had, namely, Sir John Budd Phear. Sir John Phear had been a Judge of the Calcutta High Court and came with a reputation which he fully upheld. He resisted all attempts made by the bureaucracy to encroach on the rights of the judiciary and of the public and was not popular with the Government of the day.

" Sir John Phear was urbane, dignified and courteous. He was never roused to anger except by some act of official oppression. No words passed his lips which gave offence or for which any expression of regret was necessary. He even suffered fools gladly. His equipage was the smartest in the town and the adornment of his person was not neglected ". He always wore a frock-coat and top hat to the Courts. A fine painting in the Law Library depicts his intellectual, almost ascetic, features. Sir John Phear wrote a pamphlet on local government institutions of the Aryans and had a theory that hairiness below the abdomen was a characteristic feature of the Aryans.

Sir Richard Cayley succeeded Sir John Phear as Chief Justice. Lorensz, who had met him in London as a young barrister, advised him to come out to Ceylon. Cayley had a large practice before he took office as Deputy Queen's Advocate and in due course became Chief Justice. Cayley, like Phear and Bonser, was a keen student of the Roman Dutch Law and was able to read Foet easily but his judgments do not compare in distinction with those of the other two.

Cayley was succeeded by Jacobus Petrus de Wet, a Dutch man from South Africa. He was only a year in Ceylon and on his return to England was knighted. He was followed by Sir Bruce Burnside, the Queen's Advocate who came to Ceylon from the Bahamas.



MR. JUSTICE BONSER

BONSER

Sir John Winfield Bonser was appointed Chief Justice in November, 1893. The son of a Wesleyan Minister, he had taken a double first in classics at Oxford. He came from the Straits Settlements where he had been Attorney-General and Chief Justice.

An Advocate who appeared frequently in Bonser's court has left the following note about him : " Sir Winfield Bonser was, without question, one of the greatest Chief Justices we ever had. He had great mental gifts, and was not inferior to Sir John Phear in his ready grasp of the law and the facts of the cases argued before him. At the close of a long argument, he would deal with the facts in a masterly manner. It was popularly supposed that he had no knowledge of the Roman Dutch Law, but it was soon evident that he knew more of it than any of the advocates practising before him. He had always with him a pocket edition of Voet's Pandects, and would, with the greatest ease, read off in English any passage cited to him from them. I remember he once quoted a passage from the Levitical Law in support of Voet's opinion. He had a wonderful grasp of principles, both of the English Law and Roman Dutch Law, and was not altogether guided by the opinions and views of judges in cases decided by them. And we all thought he was right in assuming that attitude. There are some judges who blindly follow precedents, forgetting that the facts of no two cases are always similar, and what is sound law in one case may be bad law in another ".

On his retirement Bonser was appointed to the Judicial Committee of the Privy Council. He was eccentric in some things. But if he had " the nodosities of the oak " he had also its strength.

LAYARD, HUTCHINSON, LASCELLES

Sir Charles Peter Layard succeeded Bonser as Chief Justice. He came of a family well known in Ceylon and had a large practice at the Ceylon Bar before he took office. He knew the country and the people and had a sound grasp of the laws of the land.

He was Solicitor-General and Attorney-General before he went on the Bench. He had many brushes with P. Ramanathan who was Solicitor-General and appeared for the Crown before him.

Sir Charles tried to persuade counsel to wear wigs. Many of them adopted the suggestion and the practice was continued until about twenty years ago. Dornhorst, Bawa, H. J. C. Pereira and Alan Drieberg rarely appeared before the Supreme Court without their wig.

Sir Joseph Hutchinson who came after Layard has been described as a "high-souled English gentleman". The young advocate who told the Chief Justice, "My lord, it is not how your lordship understand the section but how a sensible man understands it", did not mean to reflect on the intelligence of the court though he might have put the matter differently. Sir Joseph understood what he meant and his expansive smile showed that he enjoyed the situation. He held office to everyone's satisfaction for ten years and retired in 1912.

Sir Alfred Lascelles, the Attorney-General, succeeded him. He was of a modest and retiring disposition.

WOOD RENTON, BERTRAM

Sir Alexander Wood Renton, who succeeded Lascelles, was a very learned lawyer and an able judge. His knowledge of case-law was stupendous. He was a hard worker and never shirked any point raised before him. His memory never seemed to be at fault in dealing with complicated facts. At the end of a lengthy argument he would deliver his judgment with a firm grasp of all the essential details placed before him by counsel on both sides. Sir Alexander was a man of strong convictions. His hobby was the collection of Napoleonic literature and souvenirs.

Wood Renton was highly regarded as a jurist and was editor of the Encyclopaedea of Laws. After his retirement he was appointed Chairman of the Boundary Commission in Ireland. He was Treasurer of Gray's Inn in 1930. He was succeeded by a scholar of a different type. Sir Anton Bertram did not possess

SIR ALAN ROSE, CHIEF JUSTICE

the incisive mind of his predecessor but he possessed all the graces of a Cambridge classical scholar. He had been President of the Cambridge Union Society. As Attorney-General he more than held his own in the debates in the Legislative Council in which Sir Ponnambalam Ramanathan was a formidable opponent.

Sir St. John Branch succeeded Bertram. He was a member of the Colonial Legal Service.

Sir Stanley Fisher was Chief Justice for a few months on the retirement of Branch and was succeeded by Sir Philip James MacDonell, who was an excellent classical scholar. On retirement he became a member of the Judicial Committee of the Privy Council. He was followed by Sir Sidney Abrahams who had made his name as an athlete at the Cambridge University and in the Olympic Games at which he represented Great Britain in the 100 metres and the long jump. He was appointed a member of the Judicial Committee of the Privy Council in 1941.

Sir John Curtois Howard who was Legal Secretary, succeeded Sir Sidney Abrahams. He administered the Government on two occasions in the absence of the Governor.

The first Ceylonese to become Chief Justice was Sir Arthur Wijeyewardene. Sir Arthur was Public Trustee, Solicitor-General, Attorney-General and Puisne Justice at different times. He administered the Government on one occasion in the absence of the Governor-General. He has since his retirement undertaken other public responsibilities such as the chairmanship of the Languages Commission.

Sir Arthur Wijeyewardene was succeeded by Sir Edward Jayetileke who also had been Solicitor-General, Attorney-General and Puisne Justice. He was for many years one of the leaders of the unofficial Bar before that.

The present Chief Justice is Sir Alan Rose. He came from the Colonial Legal Service as Puisne Judge and was for some time Acting Legal Secretary. He was the first Attorney-General after Ceylon gained her independence.

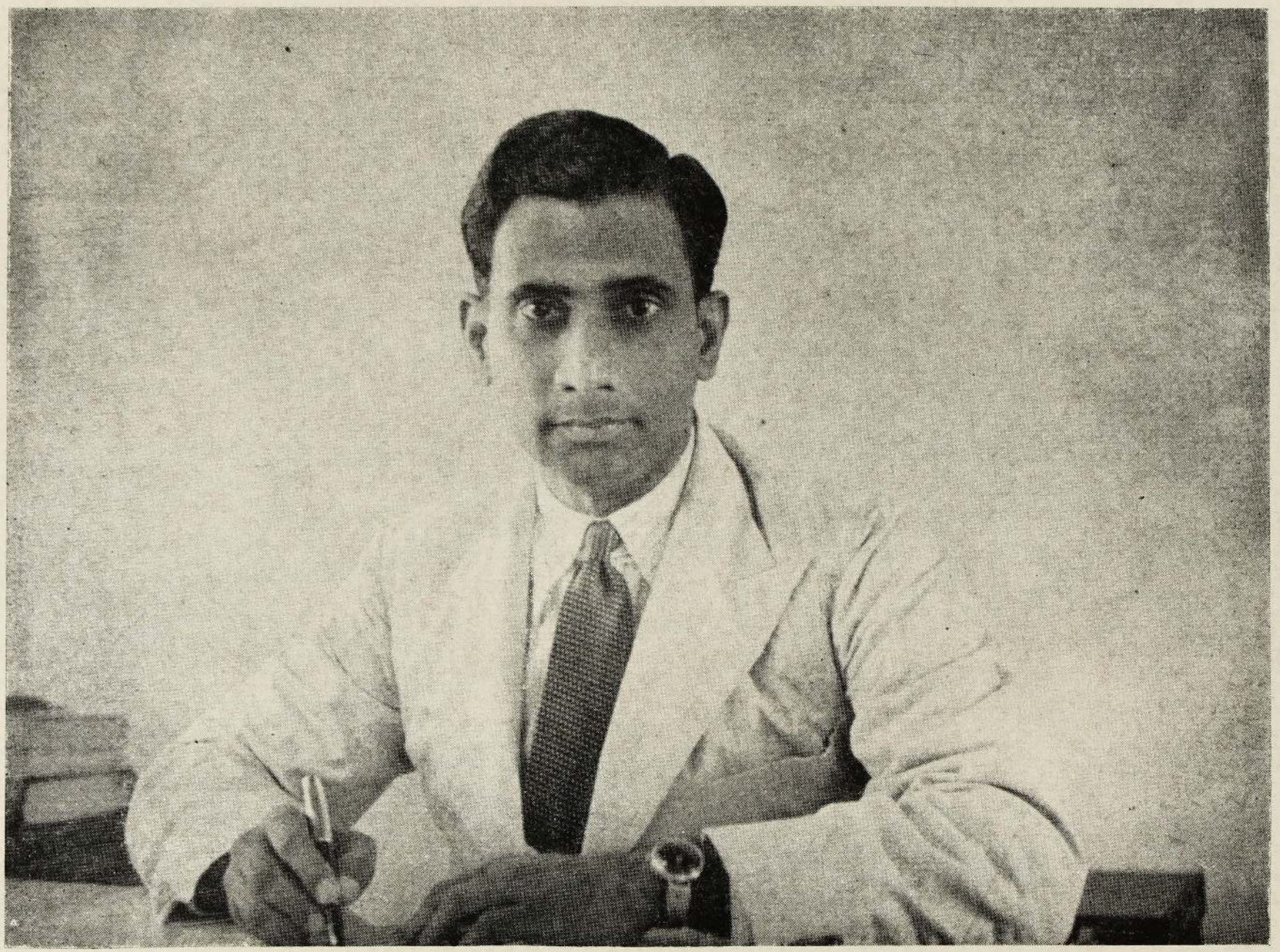
CHAPTER SIX

MINISTRY OF JUSTICE

THOUGH the Ceylon Constitution is based on the British Constitution it provides for a Ministry of Justice which is a departure from, and in some respects an improvement upon, the parent constitution itself. There has been in England an agitation for the creation of a Ministry of Justice for over half a century ; in fact in 1918 the Haldane Committee felt there was an impressive case for the creation of such a Ministry. The opposite view based no doubt on misconceptions of the functions of such a Ministry appears to have prevailed in England. The Soulbury Commissioners themselves " fully considered " this traditional opposition before recommending the creation of this Ministry in Ceylon. The overriding consideration in all matters affecting government is the public interest. As the development of law and the legal machinery is " conditioned by the prevalent way of thinking about law " it is important there should be a Minister responsible for administration in connection with justice.

FUNCTIONS

The Ministry of Justice commenced to function in October, 1947, with the Honourable Dr. (now Sir) Lalita Rajapakse, K.C., LL.D., as Minister. The Ministry has general responsibility for the administration of all Courts of Justice, except the Supreme Court. The departmental functions of District Judges, Commissioners of Requests, Magistrates and Presidents of Rural Courts are therefore subject to the general supervision of the Ministry. The Ministry



SIR LALITA RAJAPAKSE, FIRST MINISTER OF JUSTICE

of Justice discharges in this respect the functions of the English Lord Chancellor's Office. The judicial functions of the judges are controlled only by the Appellate Tribunal ; nor is the Ministry encumbered with the delicate questions involved in the appointment, promotion, transfer and disciplinary control of these judges which are assigned to the Judicial Service Commission consisting of the Chief Justice as Chairman and two Judges of the Supreme Court. The Ministry has also responsibility for Criminal Prosecutions and the Civil proceedings of the Crown, Legal Advice to Departments, and the Drafting of Legislation. For this purpose the Departments of the Attorney-General and of the Legal Draftsman come within its control. The functions of the Public Trustee, the Custodian of Enemy Property and the Commissioner for Compensation Claims are also within its purview. In regard to the legal profession, the Minister of Justice is responsible for tendering advice in respect of the appointment of King's Counsel.

An important responsibility of this Ministry is in connection with the advice tendered to the Governor-General on the exercise of the Royal Prerogative of Mercy. In England this is the function of the Home Office and is considered to be the " most difficult and exacting of all the responsibilities " of the Home Secretary. Conditions in Ceylon render the discharge of this duty even more difficult. The Soulbury Commissioners recognized this when they stated as follows :—

> " This is a large question in Ceylon, as not merely advice on the commutation of sentences is involved, but also advice on the innumerable petitions which are addressed to the Governor praying for the remission of sentences, however trivial."

In the exercise of this function the Minister and his advisers are guided by general principles which have been evolved in England as the result of long experience ; but there are considerations which are not altogether capable of being precisely formulated. The advice is the result of a full review of a " complex combination of circumstances and often the careful balancing of conflicting considerations." As Sir William Harcourt, once said in the House

of Commons in England, " The Exercise of the prerogative of mercy does not depend on principles of strict law or justice, still less does it depend on sentiment in any way. It is a question of policy and judgment in each case." Accordingly each case involves a careful scrutiny and the exercise of an individual discretion. This is therefore a most anxious and arduous responsibility of the Ministry. In order to secure that in the exercise of this discretion the Minister " should be relieved as far as possible from political pressure," the constitution requires that the Minister should be appointed from the Senate.

DELAYS IN THE ADMINISTRATION OF JUSTICE

One of the principal duties of the Ministry of Justice is to ensure a speedy and efficient administration of justice. At the time of the formation of this Ministry there was a general complaint that, despite the high quality of the judiciary, the machinery of the law moved so tardily that in many a case the delay amounted to a denial of justice. This complaint applied to both criminal and civil litigation. The first task, therefore, the Ministry set itself was to investigate the reasons for the delays in the despatch of business in the Courts and to eliminate the cause of such delays. The state of work in each Court was carefully examined, and wherever delays were due to inadequacy of staff or equipment, immediate remedial measures were taken. Within a year of the formation of the Ministry the type of delay that had been a common feature in criminal cases during the preindependent period became rare and exceptional.

APPOINTMENT OF COMMISSIONS

It was, however, found that apart from the avoidable causes for the delay which had been removed by administrative action, there were other unavoidable causes, namely, delays that were inherent in the procedure which the Courts were bound to follow. These were particularly noticeable in civil litigation and to a lesser degree in criminal litigation. In order to investigate these causes and to recommend remedial measures, the Minister of Justice caused a Commission to be appointed consisting of the Hon. Mr. Justice C. Nagalingam, K.C., the Hon. Mr. Justice E. F. N. Gratiaen, K.C.

and Messrs. F. A. Hayley, K.C., N. E. Weerasooria, K.C. and G.T. Hale, with Mr. Justice Nagalingam as Chairman and Mr. C. X. Martyn of the Ceylon Judicial Service as Secretary, with the following terms of reference :—

" (1) to enquire into the procedure, practice and administration of the Civil Courts of Ceylon and to report on such reforms as may be necessary in matters of law or practice or in the administration of those Courts in order to secure greater efficiency and expedition in the transaction of business in those Courts with due regard to public interest ;

(2) to examine the Civil Procedure Code (Chapter 86) and report—

(*a*) whether it is adequate to meet modern requirements from the point of view of ensuring efficient and expeditious transaction of business in the aforesaid Courts ; and

(*b*) if not, whether it should be replaced by a new Civil Procedure Code or whether the necessary reforms can be effected by amendments or additions to it ; and

(3) prepare and submit a draft of a new Civil Procedure Code or alternatively a draft of such amendments and additions to the existing Civil Procedure Code as may be considered necessary."

When Mr. F. A. Hayley retired from practice and left the Island, his place on the Commission was filled by Mr. E. B. Wikramanayake, K.C.

The Commission is at present engaged in conducting its investigations and it is expected that its recommendations would enable delays in civil litigation to be eliminated.

Similar action was taken in respect of the Criminal Courts when at the instance of the Minister, another Commission was appointed consisting of Mr. Justice E. F. N. Gratiaen, K.C. and Mr. Justice M. F. S. Pulle, K.C., with the former as Chairman and Mr. E. A. V. de Silva of the Ceylon Judicial Service as Secretary to inquire into the working of the Criminal Courts and to make recommendations

in regard to the steps that should be taken to secure greater efficiency and expedition in the transaction of business in those Courts. The recommendations of the Commission are awaited with interest and are likely to ensure the speedy disposal of all criminal cases. The Commission has already submitted an Interim Report on the problem of juvenile delinquents and youthful offenders which has been published as Sessional Paper XXIII of 1951.

In addition to the above, in view of the large number of complaints received in regard to the working of the Fiscals' Departments, a Commission was issued to Mr. G. Crosette-Thambyah, C.M.G., with the following terms of reference :—

(1) To review the law in Ceylon relating to the functions of Fiscals and the procedure for the transaction of business in the Fiscals' Departments, and to recommend such amendments to that law and procedure as may be necessary for removing any defects that may be found therein ;

(2) To inquire into and report on the organization and operative methods of the Fiscals' Departments, make recommendations as to the changes that should be effected in such organization and methods, and formulate a system for co-ordinating the work of the various Fiscals ; and

(3) To prepare and submit a Manual of Procedure for the transaction of business in Fiscals' Departments.

The Commissioner has already issued his Report which has been published as Sessional Paper XXXII of 1951.

THE NATIONAL LANGUAGES AND THE COURTS

At a Conference of Judicial Officers held in October, 1949, the Minister took up the question of the adoption of the national languages in the conduct of proceedings in Courts. The discussion made it clear that the delay in the adoption of the national languages in Court proceedings is due neither to any unwillingness on the part of judicial officers to do so nor to any remissness on the part of the Ministry but to certain intrinsic difficulties. At present it is

only in cases where both parties to the litigation and the Judge speak or understand the same national language that it can be made use of for the examination of witnesses. With a larger measure of co-operation from the lawyers who form an essential part of the Court machinery it is hoped that these difficulties will in the fullness of time be gradually overcome. Within the limits of these difficulties the judicial officers have agreed to adopt wherever possible, the use of the national languages in proceedings before their respective Courts. This experiment has to be given a trial for a fair period before the adoption of the national languages can be further extended.

THE TRANSLATION OF LEGISLATIVE ENACTMENTS

As no scheme to introduce the national languages as the vehicle of expression in the Courts can finally succeed unless the legislative enactments are available in the national languages, a staff of translators has been appointed as a branch of the Legal Draftsman's Department and entrusted with the task of translating the legislative enactments into Sinhalese and Tamil.

LAW REVISION COMMITTEE

In order to keep the progress of the law up-to-date a Standing Committee known as the Law Revision Committee was appointed in 1949 to advise the Ministry on any changes necessary in the existing law. The Committee consists of the Chief Justice, the Attorney-General, the Legal Draftsman, the Hon. Mr. Justice M. F. S. Pulle, K.C., Mr. (now the Hon. Mr. Justice) H. A. de Silva, Mr. N. K. Choksy, K.C. (now acting Puisne Justice), Mr. H. V. Perera, K.C., Mr. (now Professor) T. Nadarajah and Mr. S. Somasundaram.

CHAPTER SEVEN

THE JUDICATURE

THE SUPREME COURT

In some Dominions the Constitution Act itself creates the Supreme Court. The Ceylon (Constitution) Order in Council makes no reference to the Supreme Court itself which is the creation of the Courts Ordinance. It deals only with the appointment and tenure of office of the Judges of the Supreme Court.

The Chief Justice and Puisne Judges of the Supreme Court and Commissioners of Assize are appointed by the Governor-General. They hold office during good behaviour and are not removable except by the Governor-General on an address of the Senate and the House of Representatives. The age for retirement for Judges of the Supreme Court is 62 but the Governor-General may permit a Judge who has reached the age of 62 years to continue in office for a period not exceeding twelve months. The salary payable to a Judge shall not be diminished during his term of office.

The Ceylon (Office of Governor-General) Letters Patent 1947 states that whenever the office of Governor-General is vacant or the Governor-General is absent from the Island or is from any cause prevented from, or incapable of acting in the duties of his office, then unless some other person is appointed by His Majesty, the Chief Justice shall administer the Government of the Island.

THE JUDICIAL SERVICE

In Ceylon the separation of the Judiciary from the Executive is complete from the highest judicial office to the lowest.

MR. JUSTICE ENNIS

The Supreme Court always was an independent unit not subject in any way to the jurisdiction of the Executive. The District Judges, Commissioners of Requests and Magistrates, though subject only to the Supreme Court in regard to their judicial functions, were administratively under the control of the Executive. " In the early days of the British occupation of Ceylon there was not that demarcation between judicial and administrative functions that exists today, with the result that all judicial posts of the Minor Judiciary were filled by members of the Civil Service and there was a long drawn out agitation that these posts should be filled by professional lawyers ".

The Bar appears to have been vigilant about its rights even as far back as 1872. In that year the Ceylon lawyers protested to the Secretary of State for the Colonies about the promotion of a Civil Servant to the District Judgeship of Kandy. In reply, a despatch from Lord Kimberley, dated 11th July, 1872, stated that " it is essential that the two principal District Judgeships should be considered strictly legal appointments to be filled by gentlemen who have had the advantage of practising at the Bar ". Thereafter, in 1924 a Retrenchment Commission recommended that " the feasibility of gradually removing the judicial posts from the Civil Service should receive the early consideration of Government ".

Governor Manning in the same year formulated certain proposals for the approval of the Secretary of State the effect of which he said " will be to open to the local Bar a legal career in Government Service, with eight appointments in all ". These proposals received the approval of the Secretary of State. As a result of this arrangement new appointments were made ; Mr. L. M. D. de Silva, Mr. O. L. de Kretser, Mr. G. C. Crossette-Thambiah, and the late Mr. W. D. Niles were among those appointed. In or about 1926 a motion was debated in the Legislative Council requesting the complete separation of the Judiciary from the Executive. One of the chief participants in that debate was that hero of many battles, the late Sir Ponnambalam Ramanathan, Kt., C.M.G., K.C. A Select Committee of the Legislative Council was then appointed " to consider the proposal for establishing

a separate judicial service and to report with recommendations with a view to the employment of trained lawyers in judicial posts." This Committee recommended the establishment of a separate judicial service ; the appointment of professional lawyers to all posts except ten which were reserved for the Civil Service ; and the immediate discontinuance of the system of inspection of Magistrate's Courts by Government Agents. The Committee, however, did not favour the administrative control of judicial officers by the Chief Justice. Government did nothing about the creation of a Judicial Service, but adopted a policy of appointing more lawyers as Judges and Magistrates, but definitely reserved fifteen posts for the Civil Service. The inspection of Magistrates' Courts by Government Agents was discontinued, and a Civil Servant with judicial experience was appointed Inspector of Magistrates' Courts whose duty was to report to the Attorney-General. Government also accepted the principal that all questions relating to District Judges and Magistrates including appointments, transfers and promotions should be referred to the Attorney-General for advice. The Colonial Secretary, as head of the public service, still continued to exercise administrative control of judges and magistrates. In 1931 the inauguration of the Donoughmore Constitution brought a vital change ; the administration of justice became a function of a legal officer of State. The Attorney-General who functioned as officer of state for this purpose caused the appointment of a Judicial Appointments Board which was responsible for tendering advice to the Governor in regard to appointments to the judiciary from the legal profession. This Board consisted of the Attorney-General (Chairman) and two judges of the Supreme Court nominated by the Chief Justice. In 1936 the Judicial Commission formulated a scheme for the creation of a separate Judicial Service. The Chief Secretary was even then opposed to the complete removal of all judicial posts from the Civil Service on the ground that judicial experience was invaluable for the training of administrative officers and that Civil Servants who had long been on the judicial side should have the opportunity of continuing to do judicial work. The Legal Secretary

reported to the Board of Ministers that the training of administrative officers should not be done "at the expense of the proper administration of justice" and he formulated a scheme in which provision was made to retain certain Civil Servants as a transitional measure. Due mainly to the efforts of the Hon. Mr. (now Sir) John Howard and the Board of Ministers, the Ceylon Judicial Service was constituted by Minute of the Governor, dated 26th June, 1939. It will thus be seen that the establishment of the Judicial Service is the culmination of a prolonged agitation. In presenting this scheme to the State Council Sir John Howard made the following pronouncement :—

> "I think the first ideal which we should strive to attain is the fair and impartial administration of justice ; and that ideal can only be attained if the Judiciary is independent. When I say independent, I mean independence from any sort of influence whatsoever, particularly independence from the influence of the Government or from influence exercised by outside parties through the Government. I think I may say that the Judicial Service that has been established is independent".

In this connection it is necessary to remember that till 1945 the Village Tribunals (now called Rural Courts) were under the judicial and administrative control of Government Agents. By Ordinance No. 12 of 1945 the judicial control of these Courts was vested in District Judges, and the administrative control was centralised in the Department of the Principal Assistant to the Legal Secretary.

The (Constitution) Order-in-Council has now created a Judicial Service Commission consisting of the Chief Justice who is the Chairman, a judge of the Supreme Court, and one other person who has been a judge of the Supreme Court. The members of the Commission, other than the Chairman, are appointed by the Governor-General and hold office for a period of five years. A Senator or Member of Parliament is not entitled to be a member of the Commission.

The appointment, transfer, dismissal and disciplinary control of judicial officers is vested in the Judicial Service Commission. " Judicial Officer " in this connection means the holder of any paid judicial office but does not include a Judge of the Supreme Court or a Commissioner of Assize. The Judicial Service Minute provides that " for the purposes of leave and general administration the Service will be under the general control of the Judicial Service Commission ". Thus all judicial officers, including Presidents of Rural Courts, come under the general administrative control of the Judicial Service Commission, though in regard to their departmental duties they are subject to the supervisory control of the Permanent Secretary to the Ministry of Justice.

CHAPTER EIGHT

THE LAW OFFICERS OF THE CROWN

THE legal work of the Government is in the hands of the Attorney-General. The work is carried on with the assistance of a Solicitor-General, 4 Senior Crown Counsel, 21 Crown Counsel and 5 Additional Crown Counsel (temporary) a Crown Conveyancer, a Crown Proctor and an Assistant Crown Proctor.

The Attorney-General is appointed by Letters Patent. Under the new Constitution he has no political status and gives legal advice to the Governor-General when called upon. Both he and the Solicitor-General are ex-officio members of the Bar Council.

At the time of the British occupation the Chief Law Officer of the Crown was known as the Advocate-Fiscal. He was a relic of the Dutch rule and that office continued until 1833 when he came to be known as King's Advocate. In the Charter of 1833 the office is designated as Advocate-Fiscal in one section and King's Advocate in another. In 1837 on the accession of Queen Victoria the title was changed to Queen's Advocate and the officer performed functions similar to those of the Attorney-General of England. But in 1880 the Supreme Court held that he was not entitled by virtue of his office to file criminal informations in Court. This defect was remedied in 1883 by statute. The designation Queen's Advocate and Deputy Queen's Advocate were altered to Attorney-General and Solicitor-General, and the deputies to the Queen's Advocate were called Crown Counsel. The Attorney-General

and Solicitor-General were vested both with the powers exercised by the Queen's Advocate and Deputy Queen's Advocate as well as the powers exercised by these officers in England.

Until 1931 the Attorney-General was a member of both the Executive and Legislative Councils and the Solicitor-General was a member of the Legislative Council. On the introduction of the Donoughmore Constitution the Attorney-General began to function as an officer of state in addition to his normal duties. The creation in October, 1936, of the office of the Legal Secretary reduced the importance and status of the office of Attorney-General. Under the present Constitution this office has regained its importance. The Attorney-General has now been assigned a place in the Table of Precedence above the Judges of the Supreme Court.

The Attorney-General is thus something more than a public prosecutor and a general legal adviser to the Government of Ceylon. He is the general Attorney of the King. As His Majesty's Attorney-General, he represents the Crown in all criminal proceedings and civil litigation, and he also exercises important quasi-judicial and judicial functions. Apart from representing the Crown as party complainant, plaintiff or defendant, he also represents the public in matters affecting public rights.

In the course of an address given in 1936 by Mr. J. W. R. Illangakoon, K.C., who was then Attorney-General, on the functions of the Law Officers of the Crown, he said—

> " In the administration of the criminal law, the Attorney-General possesses large and important powers, which include the power to direct a Magistrate to discharge an accused, to enter a nolle prosequi in any other case, to tender a conditional pardon, to re-open a case against an accused who has been discharged, to grant or withhold sanction for the prosecution of various offences, for instance perjury, sedition, defamation, giving false information, State Council Election Offences, and a great number of other offences outside the Penal Code. Certain offences cannot be compounded without his sanction, and his sanction is also required for a person dissatisfied with an acquittal to appeal

to the Supreme Court. In addition to the power to sanction an appeal against an acquittal the Attorney-General has the power to appeal in any criminal case.

Interests of varying magnitude arise in the exercise of those functions, but each of these matters is gone into by one or more Crown Counsel and the Attorney-General or Solicitor-General personally. The Police and Excise Departments are the two greatest litigants on the criminal side and most of the applications naturally come from those departments, and these have to be considered quite irrespective of the fact that they are Government departments.

All criminal prosecutions before the Supreme Court and District Courts, and some in the Police Court, are conducted at the instance of the Attorney-General. Under our law the Attorney-General, the Solicitor-General or Crown Counsel, is entitled to appear and conduct the prosecution even in a summary case instituted by a private party.

Again, the law officers are required to give advice to every Government department in connection with any criminal case or matter arising in the discharge of the functions of those departments. For instance, in every important criminal case undertaken by the Police, the opinion and guidance of the law officers are sought. In cases in which a public officer has committed some act which savours of a breach of the criminal law, all the departmental proceedings relating to them have to be reviewed by a Crown Counsel and the Attorney-General or the Solicitor-General to ascertain whether a prosecution would be justified.

The trials of all cases in which the accused are indicted before the Supreme Court and the District Court of Colombo are conducted by a law officer. If a murder case results in a death sentence, the law officer has to furnish a comprehensive report on it. If a criminal case is taken to the Privy Council, it is the duty of the law officers to prepare a memorandum on the case setting out fully all the facts and the law applicable to the case for the use of the Crown lawyers in England.

Then, there is the criminal appellate work of the Supreme Court. Quite 90 per cent. of the criminal appeals consist of appeals in which a public officer is appellant or respondent. In all these cases, as well as in the cases in which the Supreme Court may request the Attorney-General to appear as amicus curiae, a law officer appears.

As regards the civil work, the varied duties and services rendered by the law officers can best be understood only in the light of many factors, such as the increased activities of every Government department since the new constitution was granted in 1931, the ever increasing output of legislation, including subsidiary legislation, providing for social and economic services and imposing upon departments, both new and old, the duties of administering those services, and the increased realisation by the people of their rights as a result of the spread of education, and the growth of political power, new policies, new departments, and new laws can, but result in a corresponding increase of the legal problems on which advice is sought. The scope of the opinions that are given is as wide as the diverse and difficult questions arising in the administration of the executive branch of the Government. Frequent amendments of the law call for new interpretations and the solution of questions which baffle those who have to administer them.

It is not sufficiently realised that the Government transacts the largest volume of business in the Island. It is the biggest employer of labour. It has vast commercial undertakings and it is the wealthiest land owner. All the signs are that the business will not be curtailed but will continue to increase in size and importance. On the Revenue side, advice is sought on questions relating to the Customs, Income Tax, Estate Duty, Stamps and Excise. The problems which arise in connection with these matters are of an infinite variety. Not one per cent. of this work leads ultimately to a case in Court. In consequence, there is a profound ignorance in the public mind as to the nature of the work done by the law officers' departments.

Apart from the Attorney-General, the Solicitor-General and the law officers attached to the Attorney-General's Department in Colombo, there are also Crown Advocates and Crown Proctors. There are three Crown Advocates for the three principal towns and a Crown Proctor in nearly every important town. They are appointed by the Attorney-General to represent him in the various courts and conduct the Crown legal work in those courts in the absence of the law officers. The principal function of the Crown Advocates is to conduct the District Court Criminal prosecutions of their towns. Crown Proctors also conduct criminal prosecutions in the District Courts of their towns, but their main duty is to carry out the Attorney-General's instructions in Crown civil litigation in their courts. They are not paid salaries, but remunerated by fees."

CHAPTER NINE

THE EXECUTIVE AND THE SUPREME COURT

THE Supreme Court has, during the 150 years of its existence, followed the traditions observed in the English Courts and maintained a sturdy independence. This feature in our administration of justice, which is borne out by the passage to Hultsdorf in 1804, is, perhaps, best exemplified by the history of the Writ of Habeas Corpus. The Supreme Court always assumed that the Charter of 1801 had impliedly given it the power to issue the writ. This view was tested and confirmed by an incident which occurred as far back as 1824 when a man named Rossiter or Rossier was arrested by the local authorities at the request of the Indian authorities and an application for his release was made. After the writ was issued but before the returnable date the Governor issued a regulation empowering a civil or military officer to whom an order for detention was issued to certify that fact in answer to the writ as a sufficient return to the process. The attention of the Government was drawn to this device and the dispute between the Executive and the Judiciary resulted in the Order-in-Council of 1830 which repealed the regulation and declared the power of the Supreme Court to issue the writ. This incident was followed by an attempt made in 1860 by the District Courts to exercise the same jurisdiction. The Supreme Court decided that the District Courts had no such power. In accordance with decisions in other countries it is now well accepted that an application

for a writ of Habeas Corpus can now be made before any judge of the Supreme Court and even when another judge has previously refused a writ on the same facts.

The liberty of the subject against the unlawful acts of the Executive and the supremacy of the rule of law has, therefore, been well established and the Supreme Court has claimed and exercised the power to examine the legality of any detention and release a subject unlawfully detained except when it is satisfied that martial law has been declared and a state of war exists. The most celebrated case in recent times was the Bracegirdle Case in which an application for a writ was made in 1937 against an order of the Governor requiring Bracegirdle, who was an English born British subject, to quit the Island. It was contented by the Crown that the order was made in pursuance of the provisions of an Order-in-Council of 1896 which was brought into operation by a Proclamation issued in 1914 during the first World War. It was also argued that the Supreme Court had no power to canvas the validity of the Governor's order.

Sir Sidney Abrahams, Chief Justice, who delivered the main judgment of a Divisional Bench and allowed the writ approached the problem with a citation of the words of Lord Justice Scrutton in an English case :—

> " I approach the consideration of this case with the anxious care which His Majesty's Judges have always given, and I hope will always give, to questions where it is alleged that the liberty of the subject according to the law of England has been interfered with . . . .
>
> This jurisdiction of His Majesty's Judges was of old the only refuge of the subject against the unlawful acts of the Sovereign. It is now frequently the acts of the Executive, the higher officials or more frequently the subordinate officials. I hope it will always remain the duty of His Majesty's Judges to protect those people ".

But the Supreme Court was, perhaps never more sorely tried than during the riots of 1915 when Martial Law was declared and the authorities fell into a panic. A large number of innocent

people were arrested and brought to trial on perjured testimony. During those difficult times, Justice Ennis sat unperturbed and won the admiration and affection of the people by his sturdy independence and impartiality. Never was there a more complete vindication of the authority and independence of the Judiciary than in the attitude adopted by this great Judge. His portrait hangs in the Law Library. His memory is still green and serves as an inspiration to his successors in moments of trial.

SIR THOMAS DE SAMPAYO

CHAPTER TEN

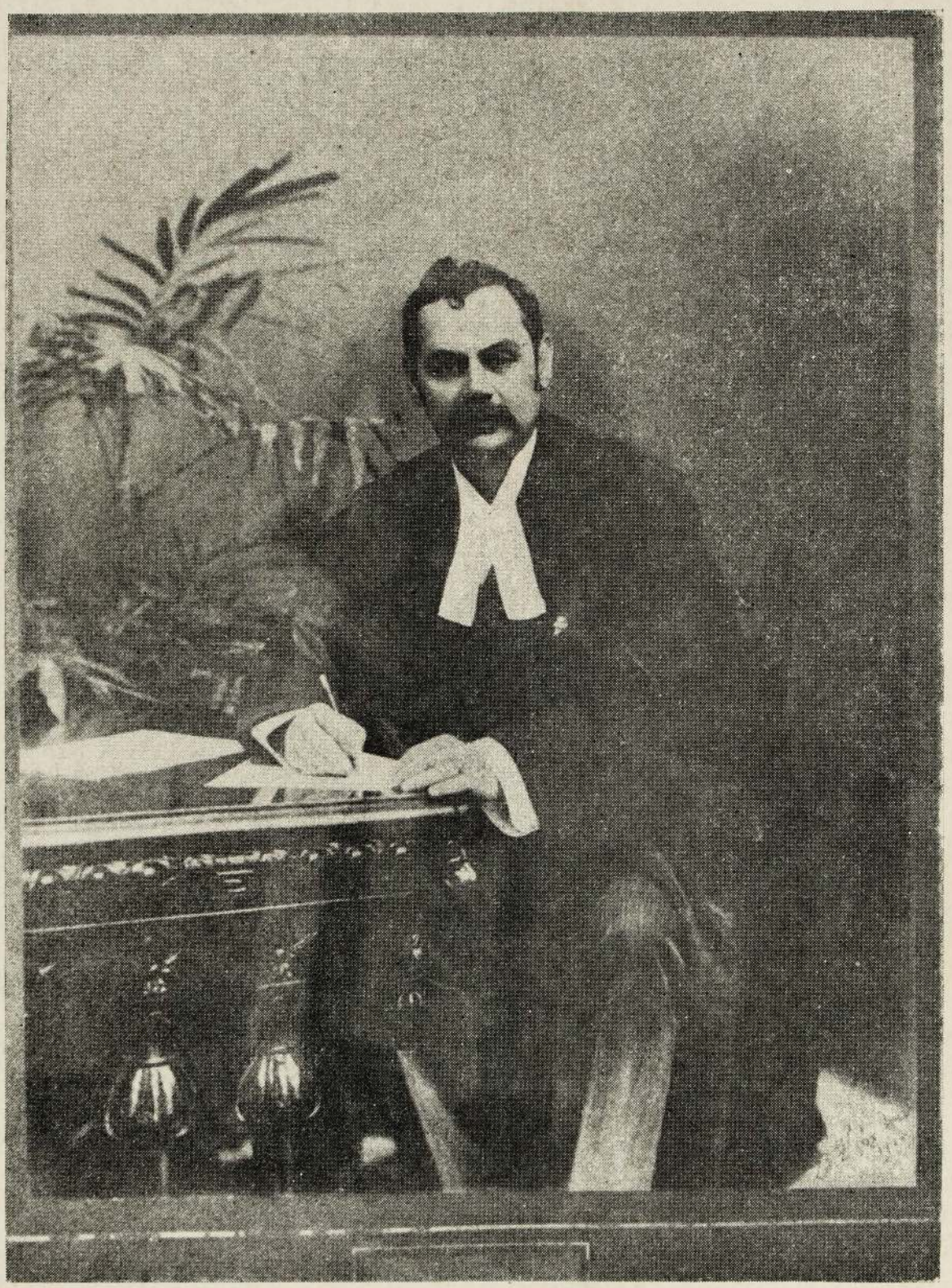
THE LEGAL PROFESSION

CEYLON is one of the few countries in the Commonwealth which continues to retain the British system of the division of the legal profession into two branches. Admission to both branches of the legal profession is governed by the provisions of the Courts Ordinance. Legal education is controlled by the Council of Legal Education which is an incorporated body. There is no State influence or control. Students who obtain a Law degree in the Ceylon University are entitled to certain exemptions from the prescribed course of studies. Gentlemen admitted to the English Bar are entitled to admission to the Ceylon Bar, and British Solicitors are entitled to be enrolled in Ceylon as Proctors.

Advocates have the right of audience in all Courts except Rural Courts, and the right of exclusive audience in the Courts of Appeal ; Proctors have the right of audience in all Courts except the Courts of Appeal and the Rural Courts. The Bar Council which is a body elected by the General Council of Advocates safeguards the interests of advocates. The Proctors are now well organised. Ordinance No. 33 of 1947 has created the Incorporated Law Society of Ceylon which receives from Government an annual grant of Fifty Thousand Rupees. The general objects of the Society are to maintain correct and uniform practice and discipline among the members of the profession of Proctors, to establish, regulate, and maintain libraries, and Pension and Benefit Schemes, and generally to protect and promote the interests and the welfare,

rights and privileges of the profession. There was an Incorporated Law Society Ordinance No. 8 of 1911 " which had been allowed to become a dead letter ". It was largely due to the efforts of Mr. Sam J. C. Kadirgamer, J.P., that the present Law Society came into being. He was elected the first President of the Law Society, and he still continues to hold office as President. The Law Society shows signs of active life and is bound to prove a great source of strength to the Proctors.

The legal profession has made abundant contribution to the public life of this country. Richard Morgan, Lorensz, Ramanathan, James Peiris, E. W. Perera, D. B. Jayatilaka, H. J. C. Pereira, the Corea brothers, E. T. de Silva, Balasingham, Samarawickrema, Sandarasagara, Duraiswamy, de Zoysa, Wijekoon and Molamure—to mention only some names—who were in the front line of the battle for political freedom were all lawyers. When the first Board of Ministers was constituted in 1931, five out of the seven Ministers were lawyers. At present six lawyers are Cabinet Ministers. The President of the Senate and the Speaker of the House of Representatives are lawyers. It is also not without interest to note that six of our diplomatic representatives abroad belong to the legal profession.



MR. FREDERICK DORNHORST, K.C.

CHAPTER ELEVEN

SOME CEYLON LAWYERS OF THE PAST

THE article on the Chief Justices of Ceylon necessarily referred to several leading practitioners at the Ceylon Bar because they were practising lawyers before they became judges. Even in the early days of the British courts in Ceylon it was customary for the Advocate-Fiscal or the Queen's Advocate to be appointed Chief Justice on the occurrence of a vacancy. Some of the best known Chief Justices of the past, such as Sir Alexander Johnstone, Sir Charles Marshall, Sir Richard Cayley and Sir Charles Layard, had been law officers of the Crown ; and as they also enjoyed the right of private practice, their advocacy was not restricted to actions to which the Crown was a party.

Over the entire period of the existence of the Supreme Court the most famous Ceylon lawyer was probably Sir Richard Morgan. He was Queen's Advocate, a Member of the Legislative Council and a public figure of great influence. He declined the office of Chief Justice owing to reasons of health. Morgan died at the age of 55 after a very full life. Many of the important Ordinances enacted before 1876 were his handiwork. He was a doughty fighter in the Legislature whether as an unofficial member or as the spokesman of the Government of the day. " For years he practically ruled the Colony and shaped the whisper of Queen's House." Morgan is the only Ceylonese to be commemorated by a two-volume biography.

Sir Richard Morgan had some remarkable contemporaries at the Bar who were even more brilliant than he was but who did not

live as long as he did. The prodigy of the time was James Stewart, born in the same year as Morgan, and appointed Deputy Queen's Advocate, an office corresponding to the Solicitor-Generalship of oday, at the tender age of 26 and Queen's Advocate at 28. He died before he was thirty.

Charles Ambrose Lorensz was born and bred in Matara and had a distinguished career at the Colombo Academy. He was eight years younger than Morgan and Stewart. Lorensz was possibly the most versatile Ceylonese of his time. He was a good lawyer and had a considerable practice before he took office as District Judge. He was a Member of the Legislative Council and a member of the famous Ceylon League led by George Wall. He was a wit, writing excellent parodies and illustrating them with his own sketches, a musician and a journalist of great influence. He started the " Examiner " and helped in the promotion of a magazine called " Young Ceylon ". He died in his forty-second year.

Sir Harry Dias started his practice at the Ceylon Bar when Morgan and Lorenz were in their prime. He was the first Sinhalese barrister, the first Sinhalese Judge of the Supreme Court and the first Sinhalese knight. Dias soon worked his way into a large and lucrative practice and, yielding to the persuasions of Lorensz, consented to be nominated to the Legislative Council. There was a time when the three Judges of the Supreme Court were Thomas Berwick, Richard Cayley and Harry Dias and they were referred to flippantly by the junior Bar of the day as " Tom, Dick and Harry." Dias was over seventy when he retired and was knighted. " It is hard on me to have to retire," he remarked, " when my mind is just maturing ". But the rich bachelor who had pinned his faith on the coconut industry was able to live in quiet and dignified retirement and it was a generation that knew him not which followed him to his grave.

Another well-known lawyer who lived a long and fruitful life was the late Sir Ponnambalam Ramanathan. He was Solicitor-General when he retired at the age of 56 to enter upon a political career. He was a hard-working lawyer as the reports which bear his name

and his editorship of the New Law Reports would show, but he was better known, especially in his later years, as a fearless representative of the people in the Legislative Council.

Frederick Dornhorst was the leader of the unofficial bar of his day and a brilliant advocate both on the civil and criminal sides. He had the cream of the work when he retired from practice and lived mostly in London. He had many offers from the Government, including the Attorney-Generalship when Sir Charles Layard was made Chief Justice, but he did not accept any. He was a popular speaker on unofficial occasions for his eloquence and wit. He died in 1930 in London and left an estate of over fifteen lakhs of rupees which, in those days, was a considerable sum of money.

The brothers Samuel and Joseph Grenier rose to high legal office. Samuel Grenier was Queen's Advocate and his brother a Judge of the Supreme Court.

The Ceylon Bar was rich in talent during the first decade of the present century. There were Walter and H. J. C. Pereira, H. L. Wendt, T. E. de Sampayo, James Van Langenberg, Hector, A. St. V. and E. W. Jayawardene, B. W. Bawa, Allan Drieberg, E. J. Samarawickrema, F. A. Hayley, C. Brooke Eliott, G. S. Schneider and H. A. P. Sandarasagara and, among the juniors, Francis Soertz, H. H. Bartholomeusz and several who are still alive. The Crown Counsel's Department had Felix Dias, C. M. Fernando, a very able prosecutor and versatile man who died in his prime, Herman Loos and L. M. Maartensz. Later there came from the Department Sir Thomas Garvin, M. T. Akbar, Stanley Obeyesekera and V. M. Fernando, all of whom held judicial office.

CHAPTER TWELVE

THE LEGAL LITERATURE

THE legal literature of the Island is, perhaps, not in keeping with the position which the profession has always held. The reason was given in 1860 by C. A. Lorensz who was in his time a lawyer of great eminence. He said—

> " The very limited profits derivable from the sale of legal works in Ceylon, (however useful they may be to Judges and Practitioners, and thus, ultimately, to the Public) must always prevent publications of this kind being undertaken at the private expense of individuals. But the information which they convey to gentlemen in the Judicial Service, who are not in the immediate vicinity of the Supreme Court, will, it is believed, be considered a sufficient reason for allowing the publication of such works at the Public expense ".

Even today this criticism holds good. The existing legal publications may be classified as Commentaries, Text Books, Translations and Law Reports. The line that divides some Text Books from Commentaries is often thin.

Several attempts have been made to give a summary of the laws of the Island but none of them are comprehensive. One of the earliest attempts was Thomson's " Institutes of the Laws of Ceylon " which was issued in 1866. A later work was " The Laws of Ceylon " by Walter Pereira. Two editions of this book were published, one in 1907 and one in 1913. The writer was a lawyer of great distinction and later a Judge of the Supreme Court. This work was a summary of the civil law and was for many years one of the

MR. HECTOR JAYAWARDENE

MR. JUSTICE WALTER PEREIRA

leading books of reference. A recent publication is " Laws of Ceylon " by Balasingham who is a member of the profession and was at one time a District Judge and a member of the legislature.

Commentaries and Text Books on different aspects of the law and statutes have been published from time to time by judges and members of the legal profession. Of these publications " The Roman Dutch Law of Fidei Commissa " by T. Nadaraja is one of the most recent (1949) and compares favourably with any book of its kind in any part of the world for lucidity, scholarship and critical analysis.

It is not possible to enumerate all the publications, but according to the suggested classification of Commentaries, Text Books and Translations, the following lists present more or less a complete picture :—

COMMENTARIES

" **Civil Procedure Code** " (1912) by K. Balasingham.
" **Civil Procedure Code** " (1932) by E. B. Wikramanayake, K. C.
" **Criminal Procedure Code** " (1935) by Dr. R. F. Dias.
" **Law of Evidence** " by Dr. R. F. Dias,
" **Law of Partition** " (1923) by A. St. V. Jayawardene.
" **Registration of Deeds** " (1919) by A. St. V. Jayawardene.
" **Thesawalamai** " by Mutukrishna (1862), Katiresu (1905), Kantawala (1929) and H. W. Tambiah (1951).

TEXT BOOKS (in current use)

" **Conveyancer and Property Lawyer** " (1949) by Coomaraswamy.
" **Delict** " by E. B. Wikramanayake, K. C.
" **Delict** " (1937) by Aluvihare.
" **Dictionary of Legal Terms** " by E. B. Wikramanayake, K. C.
" **Digest of Kandyan Law** " (1945) by A. B. Colin de Soysa.
" **Every man his own Lawyer** " by A. B. Colin de Soysa.
" **Extradition** " by Dr. R. F. Dias.
" **Fidei Commissa** " (1948) by Raj Chandra.
" **Glossary of Sinhalese Terms** " by Codrington.
" **Kandyan Law** " (1861), Armour.
" **Kandyan Law** " (1914) by Modder.
" **Kandyan Law** " (1851) by Simon Sawers.
" **Laws of Ceylon** " (1907) and (1913) by Walter Pereira.

" **Laws and Customs of the Sinhalese** " (1923) by Dr. F. A. Hayley.
" **Landlord and Tenant** " (1940) by H. W. Tambiah.
" **Manual of Conveyancing** " (1922) by T. C. S. Jayasinghe.
" **Namptissement** " (1881) by C. A. Lorensz.
" **Notary's Manual** " (1921) by Katiresu.
" **Niti Nighanduwa** " (1880) by Lemesurier and C. J. R. and T. B. Panabokke.
" **Roman Dutch Law and Fidei Commissa** " (1949) by T. Nadarajah.
" **Trusts** " by Aluvihare.
" **Trusts** " by Keuneman.
" **Sishyanu Sishya Paramparawa** " (Buddhist Ecclesiastical Law) by Woodhouse.

Among the Text Books which do not appear to be in current use are the following :—

" **Civil Practice under the Roman Dutch Law** " (1860) by C. A. Lorensz.
" **Ceylon Law Review** " by Isaac Thambayah.
" **Digest of the Civil Law of Ceylon** " (1910) by Sir P. Arunachalam.
" **Dutch Records in the Government Archives** " (1907) by Anthonisz.
" **Institues of the Laws of Ceylon** " (1866) by Thomson.
" **Jurisprudence** " by J. S. Jayawardene.
" **Kandyan Law** " (1871) by Solomons.
" **Law Reform in Ceylon** " (1852) Anonymous.
" **Legal Miscellany** " (1864–67) by Beven and Mills.
" **The Law of Mortgage** " (1905) by Hector A. Jayawardene.
" **Muhammedan Law** " (1873) by Nell.
" **Muhammedan Law** " (1905) by F. H. de Vos.
" **Notarial Deeds** " (1908) by L. N. Prins.
" **The Law of Partition** " (1918) by S. R. Wijemanne.
" **Penal Code** " (1908) by Isaac Thambayah.
" **The Law of Prescription** " (1901) by Senathi Raja.
" **The Roman-Dutch Law** " (1901) by A. St. V. Jayawardene.
" **Planters Legal Manual** " by Isaac Thambayah.

TRANSLATIONS OF VOET

" **Commentaries** " (1902), (1921) by Berwick (Books 13, 18, 19 to 21).
" **De Rebus Creditis** " (1896) by F. H. de Vos.
" **Donationes** " (1906) by Sir Thomas de Sampayo.
" **Legacies and Fideicommissa** " by H. Creasy.
" **The Paulian Action** " by C. E. de Vos.
" **Vindicationes et Interdicta** " by Casie-Chitty.

" **Decisiones Frisicai** " (1908) by F. H. de Vos.
" **Perezeus** " by E. B. Wikramanayake, K. C.
" **Theses Selectae of Van der Keesel** " (1868) by C. A. Lorensz.
" **Translations of Dutch Jurisprudence** " by C. A. Lorensz.

The sum total of all these publications are comparatively small, covering as they do a period of one hundred years. Among the factors that have prevented a larger output have been the high cost of publication and the paucity of the demand. The necessity for the State to subsidise legal publications if the present requirements of the administration of justice are to be met should be considered.

A series of Law Reports have been published from time to time and in an article on " The Law Reporters of Ceylon " (vide XX Ceylon Law Recorder, page XXXVIII) Dr. R. F. Dias reviewed the history of law reporting in the Island.

The absence of Law Reports was pointed out in 1827 by Ottley C. J. and in 1832 Commissioner Cameron recommended that the Judges of the Supreme Court should examine the earlier judgments and declare the law as stated in them. It was however, only in 1887, that law reporting on scientific lines commenced under the direction of Budd Phear C.J.

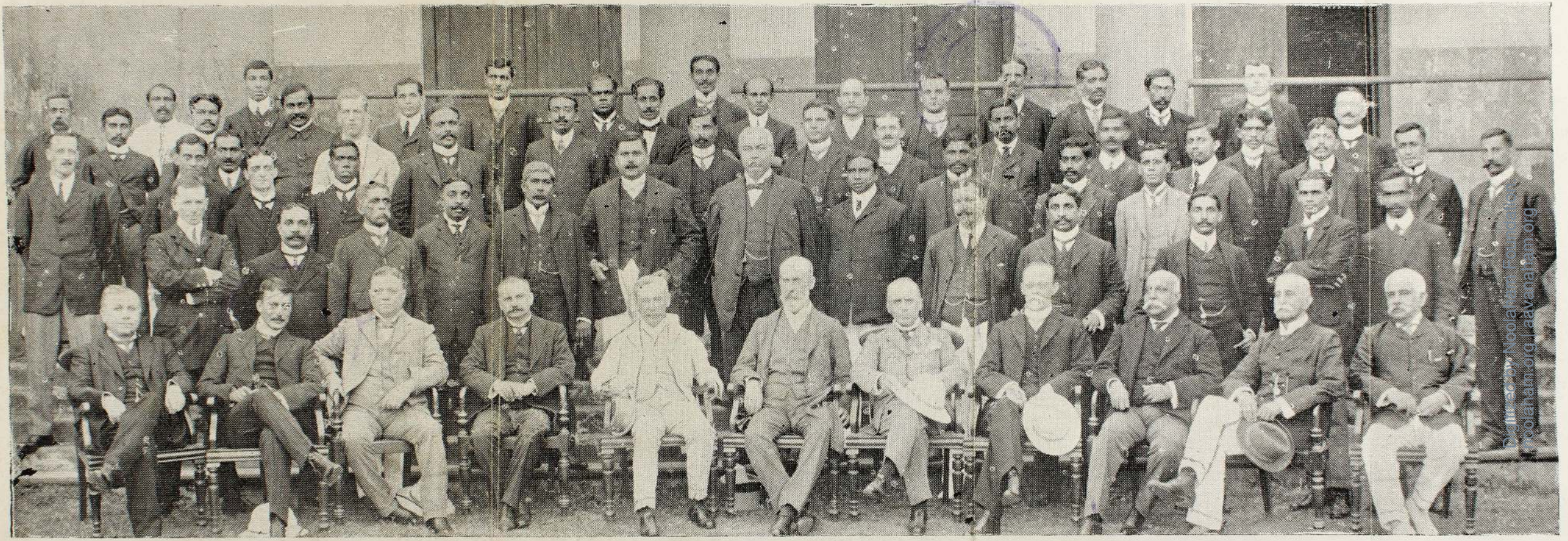
The first systematic reports were the Ramanathan Reports and the Supreme Court Circulars both edited by P. Ramanathan who was later to attain distinction both in the profession and in political life.

A list of the law reports in current use would include—

Marshall's Judgments (1833–1836).
Morgan's Digest (1833–1842).
The Appeal Digest (1842–1845).
Murray's Reports (1846–47).
The Legal Miscellany (1853).
Lorensz' Reports (1856–1859).
Nell's C. R. Appeals (1855).
Beven and Siebel's Reports (1859).
Joseph and Beven's Reports (1859–1862).

Crowther's Reports (1863).
Beling and Vanderstraaten's Reports (1863-1868).
Vanderstraaten's Reports (1869–1871).
Grenier's Reports (1872–1874).
Ramanathan's Reports (1820–33, 1843–1855, 1860– 1862, 1863–1868, 1877).
The Supreme Court Circulars (1878–1891).
Wendt's Reports (1882–1883).
The Ceylon Law Reports (1889–1897).
The Supreme Court Reports (1891–1894).
The New Law Reports (1895–).
Koch's Reports (1899).
Browne's Reports (1900–1902).
The Appeal Court Reports (1903–1910).
Balasingham's Reports (1904–1910).
Leembruggen's Reports (1905).
Leembruggen and Asirwathan's Reports (1906).
Matara Cases (1906–1914).
Supreme Court Decisions (1908–1912).
The Current Law Reports (1909–1910).
Balasingham's Notes of Cases (1911–1914).
The Court of Appeal Cases (1911–1916).
The Criminal Appeal Reports (1914–1915).
The Ceylon Weekly Reporter (1915-1920).

Of the current legal publications the most important are the official reports entitled the "New Law Reports". Among others are the "Ceylon Law Recorder" which commenced publication in 1919, "The Times of Ceylon Law Reports" and "The Ceylon Law Weekly". Several Digests of cases, none of them complete, have been issued from time to time. The most comprehensive is Rajaratnam's Digest. Among others may be mentioned Jayawardene's Digest and Tiruvilangam's Digest.



JUDGES OF THE SUPREME COURT AND ADVOCATES—A GROUP PHOTOGRAPH TAKEN IN 1910.—*Front row :* MR. H. J. C. PEREIRA, K.C., MR. B. W. BAWA, K.C., MR. WALTER PEREIRA, K.C., MR. JAMES VAN LANGENBERG, K.C. MR. JUSTICE LASCELLES, SIR JOSEPH HUTCHINSON, CHIEF JUSTICE, MR. JUSTICE WOOD RENTON, MR. JUSTICE WENDT, SIR THOMAS DE SAMPAYO, K.C., MR. R. H. MORGAN AND MR. J. R. WEINMAN