

The Bombay Law Reporter.

JOURNAL.

March 15, 1962.

THE HIGH COURT OF BOMBAY (I).

In view of the Centenary of the Bombay High Court we reproduce our following article which appeared sixty years ago in 3 Bom. L. R. p. 13 tracing the historical development of the High Court:—

THE frontispiece, we give, is a palatial building, one of the best in Bombay. It stands on the Esplanade viewing the beautiful encircling Back Bay from its main entrance. It has a westerly aspect and is 562 feet extreme length, and 180 feet extreme breadth, measured at the returning wings. The general height to the eaves is 90 feet, and the central feature is 178½ feet. The design is in early English Gothic. The actual cost of the building amounted to Rs. 16,44,528.

No branch of the system for governing any country is more important than that which provides for the administration of justice. The following is a brief sketch of its growth and gradual development in this Presidency.

The earlier power emanating from the Crown for the administration of justice in India dates as far back as the reign of James I. The first authority, however, for the introduction of British law in India was granted by Charles II by a Charter, dated the 3rd April 1661. In the subsequent grant to the East India Company of the Island of Bombay, in 1669, the Company were empowered to make laws and constitutions for the good government of the island and its inhabitants. In 1670, the administration of Justice in Bombay was in the hands of Justices who held their sittings in the Customs Houses of Bombay and Mahim. Gerald Aungier, who was then the Chief in Surat, established two Courts of Judicature. Of these Courts, which met regularly once a week, one was an inferior Court held by a covenanted officer of the Company assisted by native officers, which took cognizance of civil suits, under 200 *Xeraphins* (Rs. 140), and the other a Supreme Court, where, with the title of Judge of the Courts of Judicature the Deputy Governor in Council sat and took cognizance of all civil and criminal cases. Except in matters of the gravest necessity, the decisions of the Supreme Court were final and without appeal. The year 1675 witnessed the appointment of the first Judge, Mr. Nicolls, in Bombay.

An amended Charter was granted by Charles II to the Company, on the 9th August 1683, which empowered the Governor and Council to establish Courts of Judicature at such places as they might appoint, to consist of one person learned in the civil laws, and two merchants, and to decide according to the laws and customs of merchants. The East India Company were empowered by Royal Charter, granted in 1726, by George I., to establish at Bombay a Court superseding the existing Court, consisting of a Mayor and nine Aldermen, to be a Court of Record, and to try, hear and determine all civil suits, actions, and pleas between party and party. Under this Charter all the Common and Statute law at the time extant in England was introduced into the Indian Presidencies. The Mayor's Court was opened at the Town Hall on Thursday the 15th February, 1727, with William Henry Draper as the First Mayor. The Mayor received a yearly salary of Rs. 500; and the Aldermen, whose scarlet and black silk gowns lasted for over half a century, were allowed a monthly sum of Rs. 12, subsequently raised to Rs. 14, out of the moneys arising by commission on causes determined in

First Court in
Bombay

Mayor's Court

the Mayor's Court, to keep palanquins for the greater convenience in attending on the said Court. From this Court an appeal lay to the Governor and Council, and thence to the King in Council, in causes involving sums above the amount of 1000 *pagodas*. The Mayor's Court also gave probates and exercised testamentary jurisdiction.

In pursuance of the powers granted by the same Charter the Governor and Council of Bombay were constituted a Court of Oyer and Terminer and Jail Delivery at the same time that the Mayor's Court was established for the trial of civil suits. The Governor and the five seniors of the Council were to be Justices of the Peace, and were to hold Quarter Sessions four times in the year, with jurisdiction on over all offences except high treason. Sir James Stephen thinks that the English criminal law was introduced at the Presidency towns to some extent in 1661, and the later Charters of 1726, 1753, and 1774 must be regarded as acts of legislative authority whereby it was re-introduced on the successive occasions. However, high judicial authorities in India have maintained a different view.

The capture of Madras by the French, in 1746, having destroyed the continuity of Mayor's Court at that place, King George II. granted a fresh Charter in 1753 re-establishing the Mayor's Court at Bombay, Madras and Calcutta and repealing the provisions of the earlier Charters regarding the powers of the Governor and Council as a Criminal Court. By this Charter the Mayor's Court was limited in its civil jurisdiction to suits between persons not natives of the said towns; and suits between natives were directed not to be entertained by the Mayor's Court, unless by consent of the parties. But it does not appear, according to Morley, that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the Mayor's Court, or that any peculiar laws were administered to them in that Court. By the very same Charter Courts of Requests were established at Madras, Bombay and Fort William, for the determination of suits involving small pecuniary amounts. The jurisdiction of the Government Courts in criminal cases was limited to offences committed within the said towns and the factories or places subordinate thereto. Thus, at the Presidency towns, civil justice was administered in the Mayor's Courts and Courts of Requests, criminal justice by the Justices in Petty and Quarter Sessions.

In Bombay, the Mayor's Court for some time held its sittings in the present Port Trust Bonded Warehouses (south of the Government Central Press) but on account of great inconvenience it was removed to a large house called the Hornby or Admiralty House (present Great Western Hotel)*. But in 1788, the Court was turned out from this house to make room for the officers of the 71st Regiment as no other house was unoccupied and "His Majesty's forces should be properly accommodated". Government offered the Court a set of rooms in the Bunder (present Customs House). This proposal did not meet with the approval of the Court which unanimously came to the resolution that it should consider an assent on its part to be highly derogatory to its dignity. Government, thereupon, promised to provide as soon as possible a suitable place for its reception and requested the Judges to put up with such accommodation as the Bunder afforded. In spite of this, the Court refused to accept the accommodation offered at the Bunder. At last Government decided to offer the Court a part of the Marine House in lieu of rooms at the Bunder.

The Mayor's Court and the Court of Oyer and Terminer at Bombay existed until the year 1797, when they were abolished and superseded by Recorder's Court, established under the 37 Geo. III. c. 142, the first Recorder being Sir William Syer, Bart. This Court consisted of the Mayor, three Aldermen and a Recorder, who was to be appointed by His Majesty. The Recorder was to be paid the yearly salary of £ 5000. The Court of Recorder was invested with the whole civil and criminal jurisdiction belonging respectively to the Mayor's Court and Court of Oyer and

* Present Cama Oriental Institute.

Terminer. Its jurisdiction extended also to ecclesiastical and admiralty cases. British subjects, resident within the territory subject to the Government of Bombay, as well as those residing in territories of Native Princes in alliance with that Government, were amenable to it. An appeal lay from its decision to the King in Council. Of this Court, Sir James Mackintosh was the most distinguished ornament.

This Court was held in the same building as the Mayor's Court; but in 1800, on account of numberless inconveniences attending the Court-house, Sir William Syer, with the permission of Government, rented the Hornby or Admiralty House.

The 4th Geo. IV. c. 71, passed in 1823, authorized the abolition of the Recorder's Court at Bombay, and the establishment of a Supreme Court of Judicature in its stead, to be a Court of Record, to consist of a Chief Justice and three other Judges, being barristers of England or Ireland of not less than five years' standing. It was invested with full power and authority to exercise and perform all Civil, Criminal, Equity, Admiralty and Ecclesiastical Jurisdictions. Letters Patent, granting a Charter of Justice to the Supreme Court, were issued on the 8th December, 1823. The local jurisdiction of this Court was confined to the island of Bombay.

In 1772, Warren Hastings took steps for organising the administration of justice in the interior of Bengal. In 1797, the Governor-General in Council recommended and authorised the Bombay Government to constitute Courts of Civil and Criminal Judicature for the interior of the Presidency; and Courts of Justice had been formed, in 1799, by the East India Company, adapted to the local circumstances. Over all these Courts the Governor in Council, in the separate department of **Sudder Adawlut**, and as Head of Criminal Judicature, had a right of supervision and control, an appellate jurisdiction, and a power of exercising pardon or mitigation of punishment. In 1820, the **Sudder Adawlut** was transferred from Bombay to Surat, and was made to consist of four Judges, a Registrar, and an Assistant Registrar. It was decided that a special appeal should lie to this Court, styled the **Sudder Dewanny Adawlut** (Court of supreme civil jurisdiction), from the decisions of the Zilla Courts, in all cases where such decisions were inconsistent with the laws, or usages, or with judicial precedent, or where it might appear that there was a want of jurisdiction, or that there was a failure of justice. In the same year the powers and functions of Provincial Court of Circuit and the Superior Tribunal were united in a Court to be called the **Sudder Foujdary Adawlut** (Court of supreme criminal jurisdiction) to be established at Surat, to consist of four Judges, and to be empowered to take cognizance of all matters relating to criminal justice and the Police, and to call for the proceedings of the Criminal Judges or Zilla Magistrates.

In 1827, the **Sudder Dewanny Adawlut** was removed from Surat to Bombay, and a Court of Appeal for the Gujerat Zillah, subordinate to the **Sudder Dewanny Adawlut**, was established at Surat. This Court of Appeal consisted of three Judges, and took the place of **Sudder Dewanny Adawlut** in respect of appeals from the Zillah Courts in Gujerat. A regular appeal lay from its decisions to the **Sudder Dewanny Adawlut**, when the decisions of the Zillah Courts were altered or reversed, and where such decisions were confirmed, when the amount at issue, or damages claimed exceeded 5000 rupees. Special appeals were also open from the decrees of the Court of Appeal to the **Sudder Dewanny Adawlut**. The Court of Appeal was abolished in 1830.

As the **Sudder Foujdary Adawlut** was also removed to Bombay, along with the **Sudder Dewanny Adawlut**, a Provincial Court of Circuit was established for the Zillahs in the province of Gujerat to have the same powers and duties

as, but to be subject to, the *Sudder Foudjary Adawlut*. This Provincial Court of Circuit was also abolished in 1830.

The *Sudder Dewanny Adawlut* had no original jurisdiction. The decisions of this Court were final, except in suits where the amount in dispute exceeded 10,000 rupees when an appeal lay to His Majesty in Council. The *Sudder Foudjary Adawlut* was vested with the chief superintendence of criminal justice and Police, and with power to revise all trials in the lower Courts. It alone had the power of passing final sentences of death, transportation, or perpetual imprisonment. It was also empowered to call for and inspect the records of the lower Courts, and to mitigate or annul the sentences of such Courts.

The amalgamation of the Supreme Court, the *Sudder Dewanny Adawlut* and the *Sudder Foudjary Adawlut*, that is to say, of the Courts representing the Crown and the East India Company respectively, at the Presidency towns, was carried into effect by the Indian High Courts Act, 1861*. By this Act the Queen was empowered to establish, by Letters Patent, High Court of Judicature at Bombay, and on its establishment the Supreme Court and the Courts of *Sudder Dewanny Adawlut* and *Sudder Foudjary Adawlut* were to be abolished, the jurisdiction and the powers of the abolished Courts being transferred to the new High Court. The High Court was to consist of a Chief Justice and as many Judges, not exceeding fifteen, as Her Majesty might, from time to time, think fit to appoint. Of these Judges not less than one-third, including the Chief Justice, were to be barristers, and not less than one-third, were to be members of the Covenanted Civil Service. The High Court was expressly given superintendence over, and power to frame rules of practice for, all the Courts subject to its Appellate Jurisdiction. The Indian High Courts Act, 1865,† empowered the Governor-General in Council to pass orders altering the limits of the jurisdiction of the several chartered High Courts and enabling them to exercise their jurisdiction over native Christian subjects of Her Majesty resident in Native States.

In 1879, the Court, which in 1824 was styled the Supreme Court and in 1862 was named the High Court, was removed from Hornby or Admiralty House (present Great Western Hotel)‡ to the new High Court buildings.”

PRIVILEGE OF WITNESSES UNDER S. 125 OF THE INDIAN EVIDENCE ACT, 1872.*

NORMALLY, witnesses are bound to answer any relevant question put to them during the course of a suit or a legal proceeding, unless it is shown that they are exonerated from replying to the same by the Legislature, on the ground of public policy or on any other ground of like nature. When the question relates to a matter relevant in the suit or proceeding, the witness shall not be excused from answering it, even though the same incriminates him. The Legislature thought it expedient to protect certain types of witnesses under specified set of circumstances. The present article aims at the discussion of the nature and extent of the privilege conferred on the Magistrates, Police Officers or Revenue Officers regarding the disclosure of information as to the commission of any offence.

Section 125 of the Indian Evidence Act, lays down that no Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say when he got any information as to the commission of any offence against the public revenue.

* 24 and 25 Vict. c. 104.

† 28 & 29 Vict. c. 17.

‡ Present Cama Oriental Institute.

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