

C E N T E N A R Y



**HIGH COURT
AT BOMBAY**

1862 — 1962

HIGH COURT AT BOMBAY



Justice

Reproduced from the figure on a Spire of the High Court

HIGH COURT AT BOMBAY

1862 to 1962



1962

GOVERNMENT CENTRAL PRESS
BOMBAY

© High Court at Bombay 1962

HIGH COURT AT BOMBAY

1862 to 1962

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and Joint Secretary of the High Court Centenary Celebrations
Committee, Bombay.

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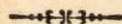
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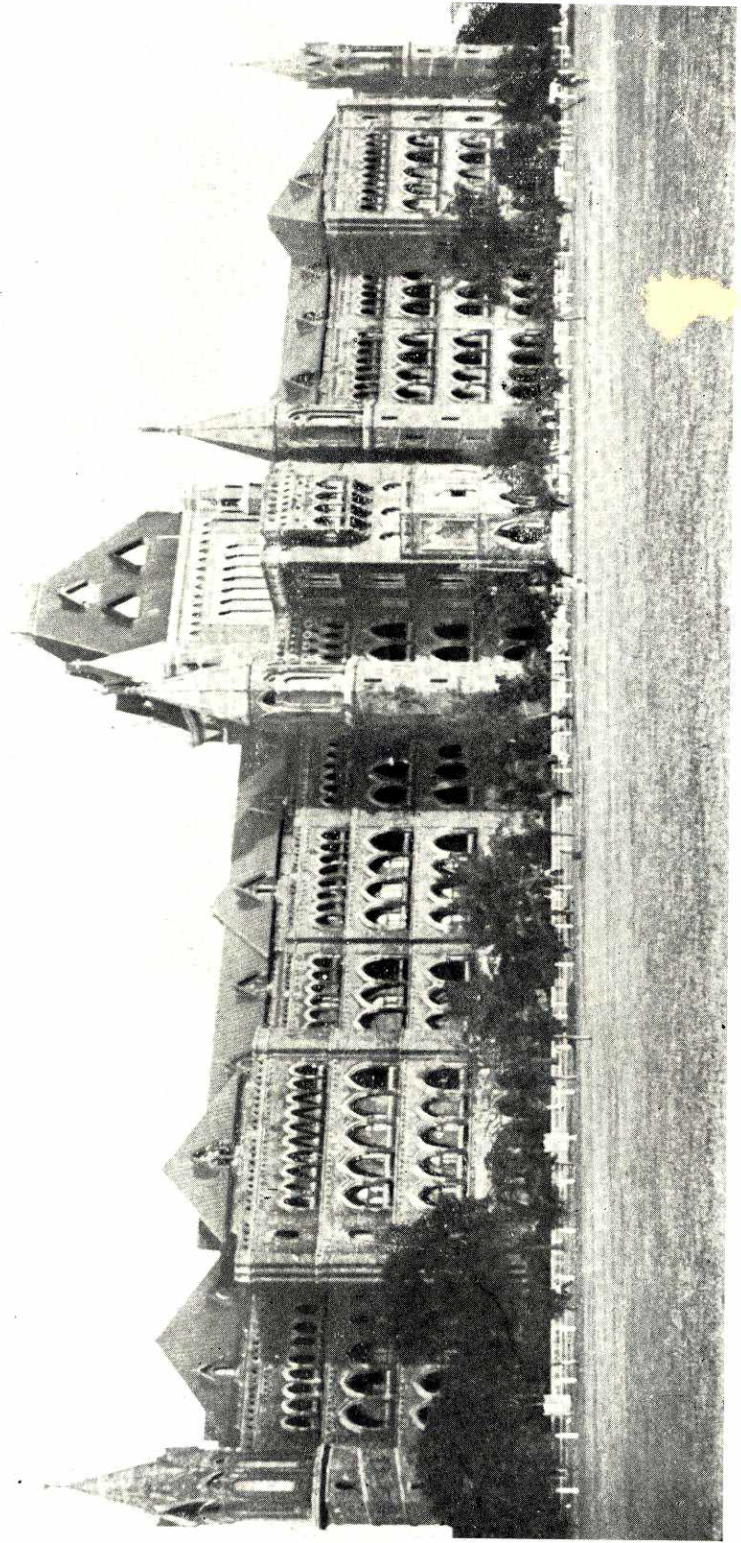
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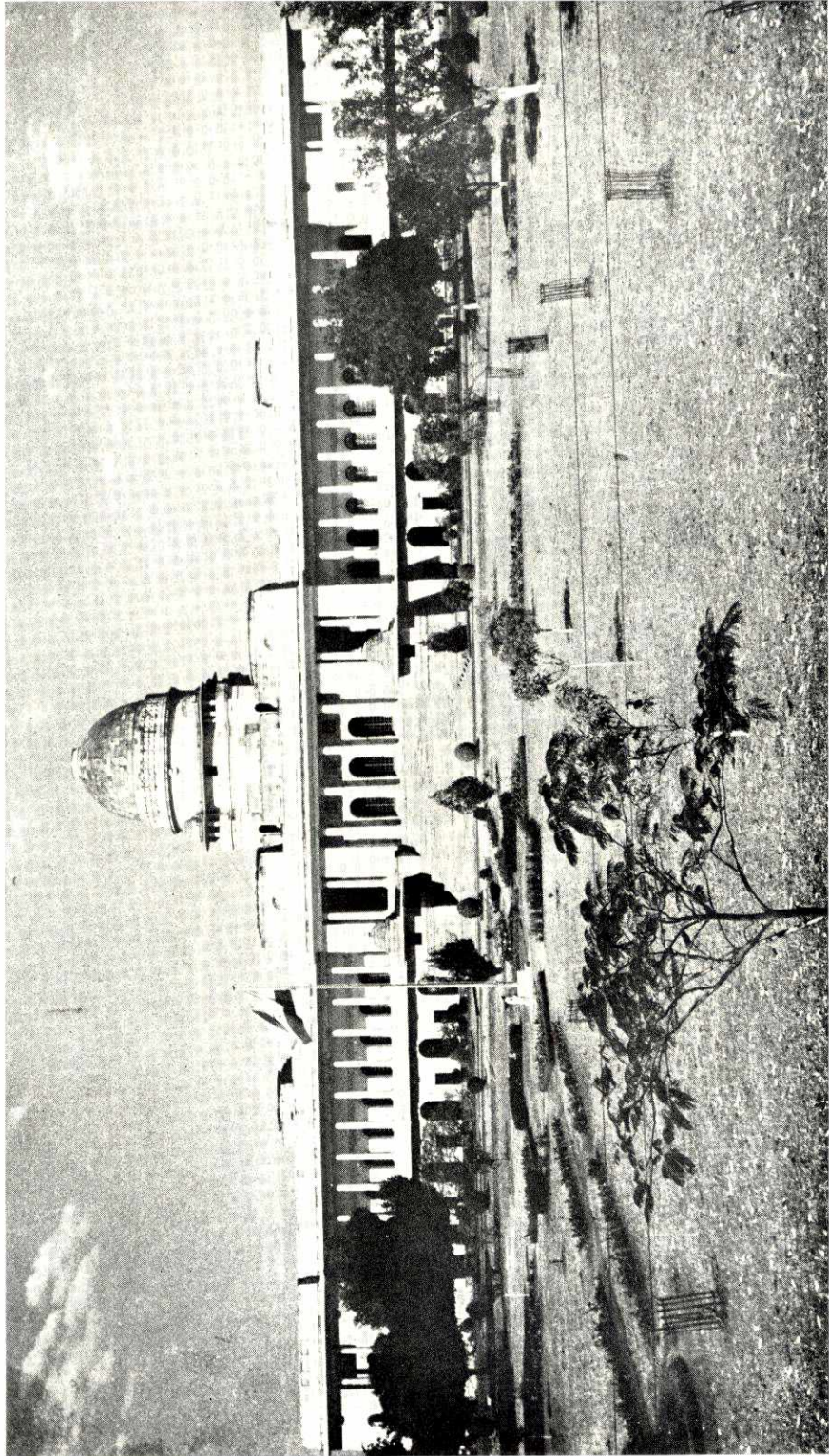
High Court Buildings



Building of the High Court at Bombay



**Building in Apollo Street occupied by the Supreme Court and later
by the High Court till 1879**

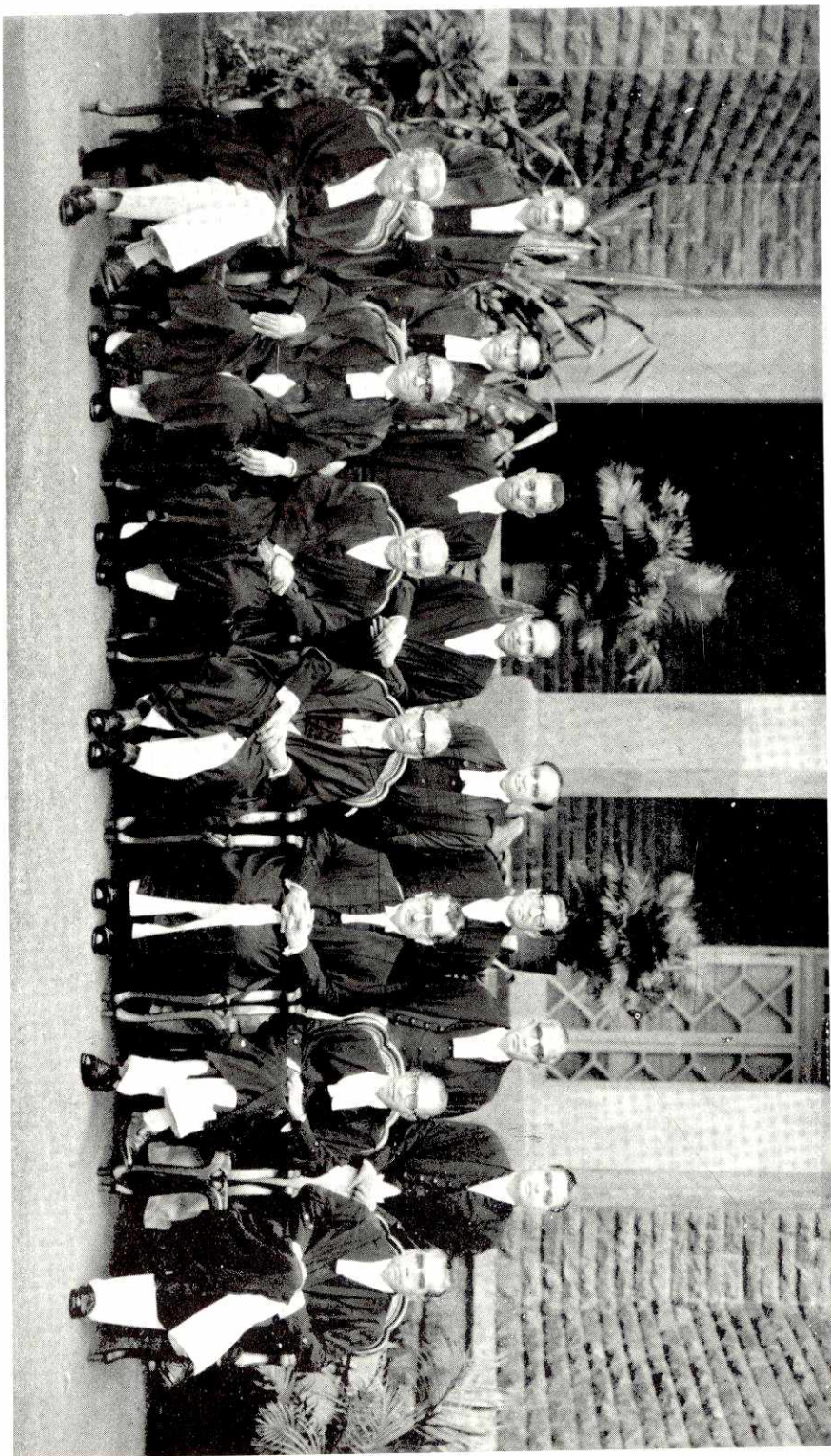


Building of the High Court at Nagpur

1962

THE HON'BLE JUDGES OF THE HIGH COURT, BOMBAY

Plate iv



Sitting (Left to Right) : D. V. Patel J., N. A. Mody J., Y. S. Tambe J., Chainani, C.J., S. P. Kotval J., V. M. Tarkunde J., V. S. Desai J.,
Standing (Left to Right) : D. G. Palekar J., Y. V. Chandrachud J., N. L. Abhyankar J., V. A. Naik J., K. K. Desai J., S. M. Shah J.,
M. G. Chitale J., R. M. Kantawala J.

PERSONNEL OF THE RECORDER'S COURT.



Top row (Left to Right) : **Bhowangee Sewagee**, Interpreter ; **Antoba Crustnagee Pundit**, Judge of the Hindu Law ; **Lellathar Chatta Bhutt**, Hindoo officer.

Bottom row (Left to Right) : **Mahmoud Ackram**, officer of the Moormen ; **Kagee Husson**, Judge of Mahomedan Law ; **Mahmoud Esmael**, Havaldar.

Application of Mahatma Gandhi for enrolment as an Advocate

Bombay,
16th November 1891.

To

The Prothonotary and Registrar

G. J.

of the High Court of Judicature.

Bombay

Sir,

I am desirous of being admitted as an Advocate of the High Court. I was called to the bar in England on the 10th June last. I have kept twelve terms in the Inner Temple and I intend to practise in the Bombay Presidency.

I produce the certificate of

my being called to the Bar. As to
the certificate of my character
and abilities I have not been
able to obtain any certificate
from a judge in England, for
I was not aware of the rules
in force in the Bombay High
Court. I however produce a
certificate from Mr W. D. Edwards
a practising Barrister in the
Supreme Court of Judicature in
England. He is the author of
the Compendium of the Law
of property in London of the
books prescribed for the Bar.
Final examination.

I beg to remain
Sir
your most obedt. servant
W. K. Pauling

The High Court at Bombay

THE HIGH COURT AT BOMBAY

It is interesting to recall that in 1665, the island of Bombay changed hands as a dowry from the King of Portugal to Charles II, the then King of England. What today is the urbs prima of India was then a little fishing village and except for the early morning catch, life was uneventful. The needs of the fisherfolk were few and simple and life presented no complex problems. Life thus moved on in a simple scenic setting until the island was made over on 27th March 1669 to the "Company of Merchants of London Trading into the East Indies" (which later emerged as the East India Company) by a Royal Charter, which empowered the Company to make laws for the good governance of the island and its inhabitants. The year 1670 witnessed the birth of the first Law Courts established by the Company. On 2nd February 1670 two Benches of Justices were appointed for the trial of minor disputes and offences, while the Deputy Governor and Council were also to sit as a superior Court for the hearing of appeals or the trial of any cases beyond the jurisdiction of the Justices or relating to "the public Government and Civil policy of the island and the Company's interest and estate thereon". In the superior Court all trials were to be by Jury. These Courts were replaced by the Court of Judicature in 1672. This Court was housed in a room in the Customs House, then known as the Guild Hall. On 8th of August 1672 the Court was inaugurated

by the then Governor of Bombay, General Aungier, with due pomp and ceremony after a colourful procession, which included four Attorneys, or Common pleaders. It started from the Fort and marched to the Guild Hall through the main thoroughfares of the city. In his speech on that occasion General Aungier said:

“The Inhabitants of this Island consist of severall nations and Religions to wit, English, Portuguess and other Christians, Moores, and Jentues, but you, when you sit in this seat of Justice and Judgment, must looke upon them with one single eye as I doe, without distinction of Nation or Religion, for they are all His Majesties and the Honble. Companys subjects as the English are, and have all an equall title and right to Justice and you must doe them all Justice, even the meanest person of the Island, and in particular the Poore, the Orphan, the Widdow and the stranger, in all matters of controversy, of Common right, and Meum and Tumm; And this not only against the other, but even against myself and those who are in office under me nay against the Honble Company themselves when Law, Reason and Equity shal require you soe to doe, for this is your Duty and therein will you be justified, and in soe doing God wil be with you to strenthen you, his Majestie and the Company wil comend you and reward you, and I, in my place, shal be ready to assist, Countenance, honour and protect you to the utmost of the power and Authority entrusted to me; and so I pray God give his blessing to you.”

These memorable words seem to have fallen on deaf ears. The Judges, who were officers of the Company, decided cases according to their own notions of what was just and fair.

On 10th February 1728 the Mayor's Court was established at the Town Hall under a Royal Charter granted in 1726 by George I. This Court consisted of the Mayor and nine Aldermen.

It was a Court of Record empowered to hear all civil suits and actions ; it also exercised testamentary jurisdiction. From this Court an appeal lay to the Governor in Council and from the Council to the King in Council in causes involving sums above 1000 pagodas.

The Charter of 1726 also constituted the Court of Oyer and Terminer composed of the President and two or more of the five senior members of his Council who as Justices of the Peace had to hold Quarter Sessions four times a year with jurisdiction over all offences except high treason.

In 1753 a fresh Charter was granted by King George II. This Charter limited the Mayor's jurisdiction and suits between Indians were directed not to be entertained except by consent of the parties. By the same Charter a Court of Request was established for the determination of suits involving small pecuniary amounts. Thus civil justice was administered by the Mayor's Court and the Court of Request, while criminal cases were tried by the Justices in Petty and Quarter Sessions.

In 1798 these Courts were replaced by the Recorder's Court. This Court consisted of the Mayor, three Alderman and the Recorder who was the real judicial authority of the Court. The Recorder had to be a Barrister of not less than five years' standing. His Court was invested with both civil and criminal jurisdiction and was also empowered to hear Ecclesiastical and Admiralty cases. Appeals from its decisions lay to the King in Council. The Recorder was the King's Judge unlike the Judges of the earlier Courts who were the servants of the East India Company. The Recorders as well as the English Barristers who practised before them set up high traditions. It was really from their time that the battle for the independence of the judiciary commenced. The two of the Recorders who strenuously resisted

executive interference with their work were Sir James Macintosh and Sir Edward West. The period of the Recorder's Court is also notable for the official association of Indians with the administration of law. Hindu Pandits and Muslim Maulvis sat with the Recorder to advise him on the personal law of the Hindus and the Mahomedans.

The Recorder's Court functioned for 26 years until 1824 when the Supreme Court was established in Bombay under the Charter granted by George IV on 8th December 1823. This Court consisted of the Chief Justice and two 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. Sir Edward West, who was the Recorder immediately before the Supreme Court was constituted, was its first Chief Justice. He carried on the struggle for judicial independence. Indeed not long thereafter a crisis developed. Sir John Malcolm, the then Governor of Bombay, issued orders that a writ of the Supreme Court should not be executed and communicated these orders to the Supreme Court. The Judges resenting such interference had the Government communication read out in open Court and then declared in the presence of the Bar and the public :

"The Court would not allow any individual, be his rank ever so distinguished or his powers ever so predominant, to address it in any other way respecting its judicial and public functions, than as the humblest suitor, who applies for its protection. Within these walls, we know no equal and no superior, but God and the King".

Within a short time thereafter one of the two Judges died. Undeterred Sir John Peter Grant, the only Judge left, then issued a fresh writ, which was likewise not obeyed. Sir John Peter Grant

then took the extreme step of closing the Supreme Court and its offices. The functions of the Court remained suspended for as long as five months, until a new Chief Justice was appointed. Sir John Peter Grant then resigned and sailed for England. A measure of the popular reaction to the courageous stand taken by Sir John Peter Grant is to be found in a warm farewell accorded to him on his departure by the citizens of Bombay, who presented him an address subscribed by 5,000 of them.

The jurisdiction of the Supreme Court was confined to the town and island of Bombay. About the same time that the Supreme Court was established in the town of Bombay, Civil and Criminal Courts, called Diwani Adalats and Fauzdari Adalats, were established in territories under the control of the East India Company outside the town and island of Bombay. Regulation II of 1827 provided for the constitution of Zilla or District Courts and the Suddur Diwani Adalat. The Suddur Adalat was invested with civil jurisdiction over all the territories in the Presidency of Bombay except the city of Bombay, and was empowered to hear and determine appeals against decrees and orders passed in the Zilla Courts. Regulation IV of 1827 prescribed forms of proceedings in Civil Courts, and provided that the law to be observed for the trial of suits shall be Acts of Parliament and Regulations of Government when applicable and in the absence of such Acts and Regulations, the usage of the country in which the suit arose and if none such appeared, the law of the defendant and in the absence of specific law and usage, justice, equity and good conscience alone. The Regulation empowered the Courts to appoint Hindu and Mahomedan Officers to expound Hindu and Mahomedan Laws. An interesting feature of this Regulation was the provision that the Court over which a European Officer presided might avail itself of the assistance of respectable Indians by referring the suit or any point

or points in the suit to a Panchayat of such persons, who were to carry on their inquiry apart from the Court and report the result. Regulation XIII of 1827 was enacted for constituting Courts of criminal justice. This Regulation provided for the constitution of Zilla Criminal Courts and Suddur Fouzdari Adalat. The supreme criminal jurisdiction over the territories in the Presidency of Bombay, except the town and island of Bombay, was vested in the Suddur Fouzdari Adalat, which was empowered to hear appeals against the decisions of Zilla Courts. This Regulation also empowered the Courts to seek the assistance of respectable Indians in the trial of cases by employing them as members of a Panchayat or as assessors or more nearly as a jury.

The Judges of the Supreme Court were appointed from the English Bar, while the Judges of the Suddur Adalats were selected from members of the Bombay Civil Service. The Supreme Court generally applied the English Civil and Criminal Law and its proceedings were also governed by the English Law of procedure, except in suits, in which the defendant was a Hindu or a Mahomedan, in which case the law of the defendant was applied. The Courts in the mofussil did not, however, follow English law and procedure. They applied the rules of Hindu or Mahomedan Law or the Regulations framed by Government and where none of these were applicable, they followed the local usage or proceeded according to what they regarded as principles of equity, justice and good conscience. In 1852-53 evidence was tendered before a Parliamentary Committee, which sat to consider East Indian affairs, that it was desirable in the interests of better administration of justice that the Supreme and Suddur Courts should be consolidated into one Court in each of the three Presidencies with the object of combining the legal training of English lawyers with the intimate knowledge of Indian customs, habits and laws possessed

by Judges in the country. The process of amalgamation was facilitated by the assumption of direct responsibility for the governance of India by the British Crown in 1856. In 1861 the British Parliament enacted the Indian High Courts Acts, which came into force on 6th August 1861. This Act empowered the Queen to establish a High Court in each of the three Presidencies of Bombay, Bengal and Madras. It abolished the Supreme Court and the Suddur Diwani and Fouzdari Adalats and vested their Original and Appellate Jurisdiction in the High Court. The Act also provided that Judges of the Supreme Court and permanent Judges of the Suddur Adalats were to be the first Judges of the High Court. Each High Court was to consist of the Chief Justice and as many Judges, not exceeding 15, as the Crown thought fit to appoint. In accordance with the provisions of this Act, on 26th June 1862 Letters Patent were issued establishing in the Presidency of Bombay a High Court under the name of the High Court of Judicature at Bombay. The Letters Patent designated Sir Mathew Richard Sausse as the first Chief Justice and also named five other Judges. Unlike what happened when the law Court was established in 1672, the High Court came into existence without any pomp and pagentry. On 14th August 1862 the Judges named by the Letters Patent solemnly declared in the presence of the Bar and the public that thenceforth they would sit as Judges of the High Court and with that declaration the High Court of Judicature at Bombay began to function.

The High Court was first housed in a building in Apollo Street, now known as the Great Western Building, then called the Admiralty House, where since 1800 the Recorder and later the Supreme Court had held their sittings. A tablet recording its association with these Courts is to be found in the building. The construction of the present building of the High Court was

commenced on 1st April 1871 and completed some seven years later in November 1878 at a cost of Rs. 16,44,528, which was about Rs. 3,000 less than the sanctioned estimate.

For a long time the Judges of the High Court were as a rule all Europeans. It was in June 1864 that the first Indian, Rao Bahadur Janardhan Wassoodewji, who was the principal Suddur Amin, that is, a First Class Subordinate Judge, in Khandesh, was appointed Judge in a short leave-vacancy of about two months. He again acted for about four months in 1865. Mr. Nanabhai Haridas, who was previously a Government Pleader, was the first Indian to be appointed a permanent Judge in 1883. The number of Indian Judges increased to two in 1895 and remained stationary for several years. The Chief Justices were, however, all English Barristers. The first Indian to serve as Chief Justice was Mr. Justice Badruddin Tyabji, who acted as Chief Justice for about a month in a leave vacancy in January 1903. It was, however, not until independence was achieved that the first Indian, Mr. M. C. Chagla, was appointed as the permanent Chief Justice of this Court. Likewise the Bar on the Original Side was dominated by English Barristers until the early part of this century.

The achievement of independence did not change the character of this Court, though it altered its composition. One English Judge, Sir Eric Weston continued to be a Judge of this Court till January 1950, when he became the Chief Justice of the Punjab High Court.

In 1948-49 several Indian States, as they were then called, merged with the then Province of Bombay. The jurisdiction of the High Court was extended to these new territories, in which several new Courts were established. On 26th January 1950 the Constitution came into being. The Constitution has enlarged the powers and jurisdiction of the High Courts. It has assigned

to the Judiciary a new role of securing to each citizen the enjoyment of his fundamental rights and ensuring that no unreasonable restrictions are placed on those rights.

On the reorganisation of the States with effect from 1st November 1956, the territories of the Bombay State and with it the jurisdiction of the High Court were considerably extended. The merger of the new territories was an additional source of strength to the High Court. Benches of the High Court were established at Nagpur and Rajkot to deal with matters arising from Vidharbh and Saurashtra region respectively. The formation of the separate State of Gujarat in 1960 resulted in the severance of ties not only with the Saurashtra region, but also with the Gujarat districts over which this Court had exercised jurisdiction for about a century.

The British assumed administration over "Nagpur Province" in 1853, but the former Bhosle Kings remained the rulers and dealt with the detection and punishment of crimes. In 1861 the Province lapsed to the East India Company as there was no heir to the Bhosle throne. The year in which the High Court at Bombay received its Charter also saw the birth of another Court only 520 miles away, at Nagpur. It was the Court of the Judicial Commissioner of the Central Provinces and was the highest Court for those areas.

To begin with, the Court had only one Judge—the Judicial Commissioner himself. The first Judicial Commissioner was a full-fledged Colonel, Colonel Spence. He was also the principal administrator of the area and so had considerable touring to do. Inevitably, therefore, the Court of the Judicial Commissioner was also peripatetic. On tour, he sometimes held his Court in a tent and when the temperature rose to 110° in the shade, he sat in his shirt sleeves with plenty of liquid refreshers. Advocates

reached the Court by tonga or bullock-carts arranged in relays by a wealthy client.

In November 1863 Mr. John (later Sir John) Strachey took over as Judicial Commissioner. He was a barrister-at-law and from his regime till 1936 when the Judicial Commissioner's Court was abolished, it functioned with all the solemn ritual and regularity of a High Court. It is said of Sir John that in spite of his want of acquaintance with local and personal laws, he read with great thoroughness the records of the cases before him and his decisions were substantially just.

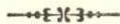
The seventy-five years that the Judicial Commissioner's Court functioned were years of steady progress. Its judgments began to be officially published from 1886 in the Central Provinces Law Reports which later were known as the Nagpur Law Reports.

On 24th October 1936 "the Berars" were added to the then Central Provinces which thereafter became known as "The Central Provinces and Berar" with similar changes in the nomenclature of the Judicial Commissioner's Court.

The Judicial Commissioner's Court ceased to function in 1936. On 9th January 1936 the High Court of Judicature at Nagpur was constituted under a Letters Patent. Its first Chief Justice was Sir Gilbert Stone. The High Court thus constituted functioned till 1948 when, with the advent of independence and the framing of the Indian Constitution, its nomenclature was changed to the High Court of Madhya Pradesh at Nagpur. This High Court again underwent a major transformation in 1956 as a result of the first reorganisation of States. Eight districts of the former Madhya Pradesh were incorporated in the then State of Bombay and are today referred to as the "Vidarbha Area" of Maharashtra State in several of the new laws recently made for that territory. Nagpur which ceased to be the seat of

the High Court of new Madhya Pradesh was given a Bench of the Bombay High Court with minimum of three Judges at Nagpur. The arrangement was made permanent by the Central Act No. 11 of 1960. With its fine traditions and a history of which it may be justly proud, the Nagpur area must prove a source of strength to the Bombay High Court.

Of some of the things of abiding value, which the British brought into this country, the system devised by them for the administration of law and justice must be regarded as their greatest contribution. The British not only gave unity to the administration of law and justice throughout the country but also gave the High Courts fine traditions which English judges and Barristers continually preserved and nourished. Such must be, and indeed is, the verdict of history. It has been the constant endeavour of the Bench and the Bar of the High Court at Bombay ever since the British left to preserve and to enrich this heritage—a difficult task requiring constant vigil. May this High Court continue to uphold and maintain the same traditions and may it continue to enjoy the confidence and affection of the people whom it seeks to serve.



Some Former Judges



A Judge of the Supreme Court at Bombay

Sir John Peter Grant, Kt.

**Some Judges of the Privy Council and Supreme Court
from Bombay**



**The Right Honourable Sir Dinshah F.
Mulla, P.C., Kt.**



**The Right Honourable Dr. M. R. Jayakar,
P.C., Kt.**



Sir Harilal J. Kania

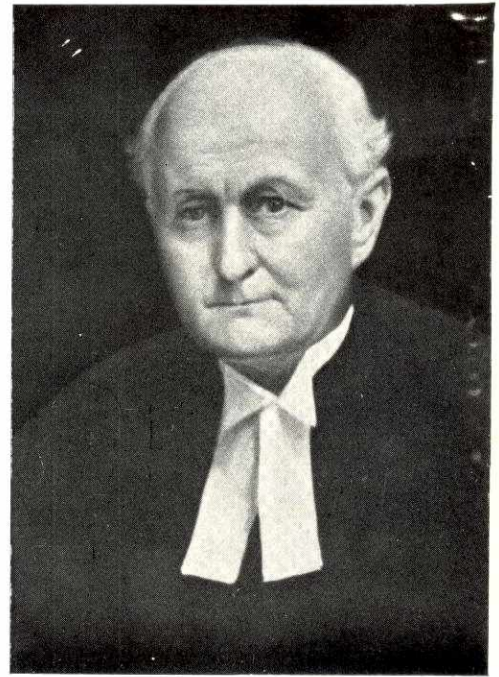


Some Chief Justices of the High Court

Sir Michael Westropp, Kt.

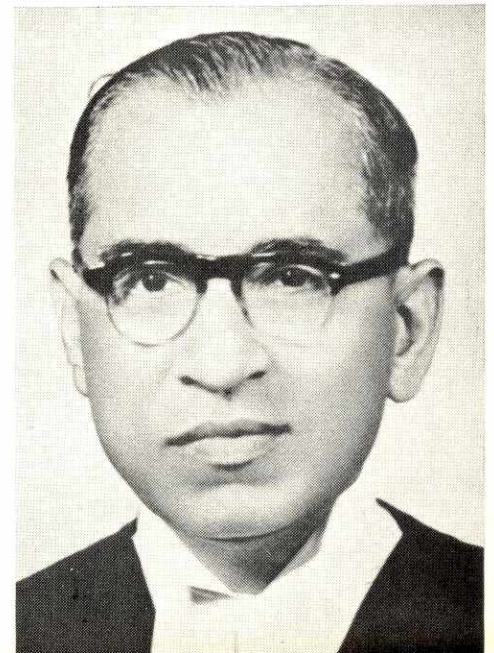
Sir Norman Macleod, Kt.

**The Right Honourable Sir John William
Fisher Beaumont, P.C., Kt., Q.C.**



Mr. M. C. Chagla

**Mr. H. K. Chainani,
the present Chief Justice**



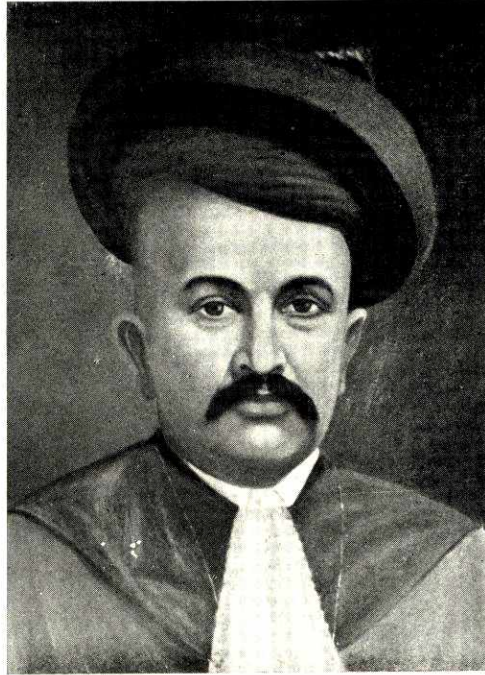
Some former Judges of the High Court



Mr. Janardhan Wassodewji



Mr. Nanabhai Haridas



Mr. K. T. Telang

Reminiscences

AN ARTICLE* BY THE LATE Mr. JUSTICE
CHANDAVARKAR

Is 50 years since 1862, when His Majesty's High Court of Judicature of Bombay was established, and Sir Basil Scott, its learned Chief Justice, celebrates the occasion today by a dinner to his colleagues on the Bench and to members of the Bar on the Original Side, and by a conversazione of Pleaders and Solicitors. The event carries one's memories to the past and the traditions which have gathered round the highest Court of Justice in the Presidency. It rose on the ashes of two old institutions—the Supreme Court of Bombay and the Sadar Dewanee Adalat of the Presidency. The former had till 1862 exercised jurisdiction, civil and criminal, in cases arising in the town and island of Bombay, while the Sadar Dewanee Adalat had been till that year the highest Court of Appeal for litigants in the *mojussil*. The Judges of the Supreme Court had been English lawyers, brought from England, the Judges of the Sadar Adalat had all been drawn from the ranks of the Bombay Civil Service. Of the nature and work of each of these two tribunals and the effect they had on the legal and social polity of their time the late Sir Henry Sumner Maine has left a short but graphic account in one of his scholarly works. Though the two courts had nothing to do with, and

*Courtesy: "TIMES OF INDIA"

worked apart from each other, though the procedure and in several respects the principles of law of the one differed from those of the other, yet the Judges of the Sadar Court naturally looked up for example and influence to the Judges of the Supreme Court, because of their training in the English school of law and pleading. In the hands of the Judges of the former tribunal, however, the rules of Indian law and usage dissolved and made way for rules borrowed from English law books. In the hands of the Judges of the Sadar, Indian laws prescribed by the Shastras and usage stiffened and received fresh vitality, their decisions were marked (to use Sir Henry Sumner Maine's pregnant phrase) by "much Brahminical ritual and not a little doctrine." It was when this divergence of ways had reached its climax that the crisis for the two Courts came, and in 1862, when Bombay had come to be in closer touch with its Mofussil than before, they disappeared and their place was taken by "Her Majesty's High Court of Judicature", with its Royal Charter and its Letters Patent.

SAUSSE THE SILENT

Its first Chief Justice was Sir Mathew Sausse, known in his time as Sausse the Silent. Cold, frigid and stern, he was the very emblem of judicial dignity and reserve. His judgments were reflections of his temper — they were matter of fact, terse and strictly to the purpose in the enunciation of legal principles. Bombay saw little of him outside the High Court Bench ; he knew no social recreation except after Court hours a solitary ride on the Back Bay shore, then mostly swampy ground, and punctual attendance at Mass on Sunday mornings in the Roman Catholic Chapel at Girgaum still existing and known as the Portuguese Church. It was said and believed of him that he led a life of seclusion, that he never entered Government House, and never read newspapers. The popular idea about him was that he acted strictly

on the principle that a Judge should see and hear nothing but what comes to his eyes and reaches his ears when he presides on the Bench. That was perhaps exaggeration, but the popular version of the time represented on the whole the strictness of Sir Mathew Sausse's judicial temper. He had among his colleagues some brilliant lawyers. They were Sir Joseph Arnould, distinguished for his knowledge of law and literature, a friend of the poet Robert Browning, well-known in the literary circles of London as a leader writer for the Daily News before he came out to India as a Judge of the Supreme Court of Bombay, and author of "Marine Insurance", which has become a standard work of reference in British and other Courts; Mr. Justice (afterwards Sir Richard) Couch, who succeeding Sir Mathew Sausse as Chief Justice of Bombay in 1866, became Chief Justice of Bengal in 1870, and was a most valued member of the Judicial Committee of the Privy Council until his death some years ago; and last but not least of all, Mr. Justice Kinloch Forbes, the beloved of Judges of the time, drawn from the Bombay Civil Service, noted for his oriental learning, and almost worshipped by the people for his saintly character. He stands immortalised for all generations in this Presidency by his Ras Mala which has become an Indian classic.

THE KARSANDAS CASE

Some eminent jurists have remarked what indeed, is an obvious truism that the greatest change which has come over the people of India owing to the influences of the British rule is the growth on all sides of the sense of individual legal right with a corresponding improvement in moral judgment. Maine indeed doubted whether the growth in the latter respect was in proportion to the former, but always and everywhere it is generally so. Courts of Justice do not exist to make men virtuous; that is not their direct

aim or avowed function. Theirs is to redress and punish violations of duty. But directly we get to the idea of duties we think of rights and Courts in British India have not only strengthened the judicial conception of rights and personality but have multiplied them. This is their highest use because of their educative effect. The first step to improvement in the moral judgment is to make a person feel he is worth something — to create in him a sense of manworthiness. And this sense our Courts, especially our High Courts, foster both directly and indirectly. In illustration of that we need not go farther back than the very year 1862, when the Bombay High Court took the place of the Sadar and Supreme Courts. In the earlier part of that year the Supreme Court had heard and delivered judgments in the suit known as the Maharaj Libel Case. That was a suit for damages brought by a Vallabhacharya Maharaj against Karsandas Mulji, a courageous Hindu journalist and reformer of the time. Karsandas had published articles in a newspaper which he edited reflecting on the character of the Maharaj, whom several of Hindu castes worshipped as a deity. The action was one for libel and naturally it created a great deal of commotion in Bombay. The sight of a sacred personage compelled to seek redress in a Court of law was something unusual to the side of Hindu orthodoxy ; more unintelligible still to the orthodox Hindus was the sight of a private individual like Karsandas having the boldness to criticise and condemn the character of a Maharaj whom they felt he like his caste fellows was bound to worship. The trial took place before Sir M. Sausse, Chief Justice and Arnould J. During the period it lasted public speculation was rife as to how it would end. The orthodox counted on success because the Chief Justice was known to be a strict Roman Catholic ; the heterodox felt sure they would win because Sir Joseph Arnould was known more or less

as a liberal who sympathised with the reforming spirit. After a prolonged trial lasting for 22 days judgment was delivered— Sir Mathew Sausee found in favour of Karsandas on the substantial issue but against him on a minor issue ; Sir Joseph found in his favour on all. It was decided in April 1862. It ended in a substantial victory for Karsandas ; and Sir Joseph Arnould, in his judgment, summed up the wholesome result of the trial in these words :—

“ It has probably taught some to think ; it must have led many to inquire. It is not a question of theology before us. It is a question of morality ”.

SHARE MANIA CRISIS

This was, as it were, the last word of the Supreme Court left as a legacy to its successor, the High Court, for, within but a short time after the latter had come into being, it had to vindicate the cause of commercial morality in the town and island of Bombay in connection with the numerous cases in the form of bankruptcies, liquidations, actions for deceit and dissolution of companies which the Court had to deal with owing to the ruin of trade and credit brought on by what in Bombay's history is known as the Share Mania Crisis of 1864. How well the Court rose equally to the occasion, and purged the city of its commercial parasitism, how swift and sharp was the justice it meted out to men who had brought misery on many a home — all this is familiar history recorded in the pages of the authorised Law Reports of the Court of that time. That history was repeated for the second time in 1879 and 1880, when, owing to the failure of the Glasgow Bank, another commercial crisis overtook Bombay. And then also the High Court showed how jealously it watched the cause of commercial morality on which the prosperity and fair name of Bombay entirely depend.

LAND TENURE CASES

If Bombay's credit stands on its commercial problem, the credit of Mofussil depends on its land problem. Years ago in a case in which I as a pleader instructed Mr. Latham, then Advocate General, he began his argument before Sir Charles Sargent, then Chief Justice, and another Judge, as follows " My Lords, this second appeal is literally what is or in substance many, I should say most, appeals on this appellate side of the Court are — an echo of the cry for ' three acres and a cow ' made familiar to us by Mr. Joseph Chamberlain's Radical Programme". The fact was that the appeal in which Mr. Latham appeared was the outcome of a suit brought by a ryot in the Mofussil to recover by partition from his brother three acres of land and a cow ; and Mr. Latham's remark to the Court put in in nut shell the nature of the problem in the large majority of appeals preferred on the appellate side of the High Court by litigants in the Mofussil. Careful students of Isaiah, the eloquent prophet of the Old Testament, know that one of the lessons he impresses is that every civilized community develops sooner or later its land problem. And ours in the Mofussil has been developing and the process of development is still going on. Judges in former times coming fresh from England were known to express surprise that in India a litigant would fight in Courts of law to the bitter end for even a few inches of ground. To own a plot of land, however small, is considered a mark of respectability. The earlier history of our High Court is full of interesting and instructive matter on this question of the land problem of the Mofussil of this Presidency, and in the literature on that subject in the reports of survey officers and judicial decisions, Sir Henry Sumner Maine found much of the utmost value and instructiveness, in spite of their unattractive language and repulsive details. The first thing that strikes us in the

judicial decisions is how in dealing with cases between landlord and tenant, our judges trained in English jurisprudence and borrowing their ideas from the feudal laws of England, leant more on the side of the landlord than of the tenant. If a landlord sued his tenant in ejectment, alleging that the latter had no rights of permanance and the tenant pleaded that he and before him his ancestors had for generations held the land on a perpetual tenancy, the fact that the possession of the tenant's family had been for 50 or 100 years held not to avail him unless he could make out his alleged right of permanancy by strict proof. This was, especially in a country like India, which had passed through vicissitudes of rule before British conquest, practically impossible. But the judges acted on the English laws of land and evidence, and so the tenant in nine cases out of ten lost, however long his possession. The earlier decisions in that direction became judge-made law and it was not long before Judges and Revenue Officers coming in contact with ryots found how those decisions were proving disastrous to the agricultural community. The remedy lay in legislation and that accounts for section 83 of the Bombay Land Revenue Code, which in 1879 enacted, that if a tenant were found by himself and his ancestors to have been in such long possession that the origin of it could not be known, the Court should hold him to be a tenant in perpetuity. For some years after that section had become law, Judges accustomed to the older law could not easily get over the legal habit of mind bred by it. And it used to be a question of subtlety in such cases whether a possession for 40 years or 60 years or 50 years was sufficient in law to raise in favour of the tenant the presumption required by the Section. But time innovates and we are no longer slaves of the old habit. So the tenant with long possession is more secure now than he was in the earlier days of the Court.

THE RIGHT OF THE RYOT

But the most remarkable feature of land problem in relation to the High Court is the conflict into which the Court was brought with the executive and the manner in which the High Court endeavoured to guard the rights of the ryot. Under what used to be called the Elphinstone Code, if a ryot felt aggrieved by the amount of assessment levied from his land by the Collector, he should resort for redress either to a Civil Court or to Government. The ryot in such cases of course resorted to the Court. The High Court in the majority of cases upheld the action of the Collector, interfering with his discretionary power only where the Court was convinced that the Collector had either exceeded his power or had acted arbitrarily. In cases relating to land revenue, the question often arose whether the Collector could levy assessment to the extent of more than one sixth of the gross profits of the land, because that was the limit (it used to be argued), which, sanctioned by Manu's law, had become the custom of the country. In the course of time the larger question came to be discussed whether the State was landlord and whether the assessment on land was rent or tax. Suits against Collectors complaining of the excessive levy of assessment showed a tendency to increase. In the majority of cases the Collector won in the High Court, but only after a close scrutiny as to whether he had exercised his discretionary power arbitrarily. The Kanara land revenue suits filed against the Collector of that district in 1870 brought matters to a crisis. In about that year the survey settlement was applied to that district. The ryots protested that soon after the district had been taken by the British from Tippu Sultan by conquest, peasantry, who had left land owing to Tippu's oppressive rule and excessive exactions had been brought back by Sir Thomas Munro under a guarantee that they should hold land

under fixity of tenure and perpetuity of assessment. Those suits were heard in appeal by the High Court which held that the guarantee given by Sir Thomas Munro did not bind the Government as he had acted in the matter without the sanction of the Court of Directors of the East India Company. But the result of it all was the revival of the old controversy whether it was expedient to continue to civil courts jurisdiction to try suits against Government on questions of land assessment and other revenue matters. A bill had been introduced for that purpose in 1873 into the legislative council of the Governor General by Mr. (afterwards Sir) Barrow Ellis, the Bombay member then of the Government of India, but it had been kept in abeyance till 1876. In that year it was revived and recast and reintroduced by Mr. (afterwards Sir) Theodore Hope. His speech and the speech of Charles Hobhouse, then legal member of the Government of India, and the speech of Lord Northbrook, then Viceroy were all pitched in the key of criticism of the decisions of the High Court, of one notably of Sir Michael Westropp, C. J. and Melvill J. The bill passed into law but not without many a public protest. Solved in that way, the land problem appeared at that juncture in another form. The ryots in the Deccan, driven to desperation by the rapacity of the Marwari money-lenders, took the law into their own hands and there was wholesale cutting of marwari noses in some of the villages. "All the result of ryots improvidence and the High Court's law" said some. "It is all due to rigid system of land revenue" said others. Those were days of doctrine of freedom of contract and of survival of fittest. It was proposed to change the law and put restrictions on the powers and rights of money-lenders. One very learned Judge of the High Court wrote a pamphlet protesting against the proposals to revive the ryot at the expense of the money-lender and put fetters on the transfer of land in

those days of freedom of contract. High Court was believed to have no faith in the proposed legislation but it became law and the long and sometimes animated controversy ended in the enactment which has found place in our statute book as the Deccan Agriculturists' Relief Act. Whether it has relieved the agriculturists is a question and both Government and the public are still at it.

HINDU LAW REFORM

The land problem out of the way, the High Court entered in about 1877 on what I would enlist an era of Hindu law reform. And there due to the legal genius and broad vision of Sir Michael Westropp, Chief Justice from 1870 to 1882, and of Sir Raymond West, Puisne Judge from 1871 to 1887 the Bombay High Court on its record stands very high — I would say, with due regard to the Judgments of those two Judges in particular, unequalled in India. The administration of Hindu law affects the vast majority of the people in the Presidency. During times of the Sudder and the Supreme Court its administration had been more or less confused and chaotic. Judges were in the hands of Shastris. The former could not know the original law books in Sanskrit and the Shastris did not know English. The Shastris were in their own way a useful class of men, but for want of judicial training, they were unable to distinguish between law and trial. They were good servants but bad preachers. And for a time they mastered the Judges — it was almost a case of blind leading the blind. The Judges had to take their Hindu law from the Shastris and that law as conceived by them, was mostly of a liberal character, especially where women's rights were concerned. Further, the Privy Council, which laid down the law finally for the whole of India was dominated then by the legal school, which also as a rule was (unalterable) to women and was more ritualised than the Maratha School. It is to these honorary influences of the time

that we had the judge made law, not countenanced by anything in our leading authorities, the 'Mitakshara and the Mayukha' that a widow succeeding as heir to her husband or a mother succeeding as heir to her son, takes but an interest for life and that, on her death, the property goes to the first deceased's reversionary heir. This idea of reversion is an absolute one and has, as Mr. Justice Telang pointed out in one of his lucid judgments, no support in our law books. But the mischief was there. Perceiving this unsatisfactory state of things Mr. (afterwards Sir) Raymond West, then, Registrar of the High Court and Dr. Bühler, then Professor of Oriental languages, Elphinstone College, published their digest on Hindu law. The High Court could see into law better and appreciate the virility of the Maratha School.

FEMALE INHERITANCE

It would take me long to dwell on the Courts' achievements in putting the administration of the Hindu law on the liberal basis, and progressive ones on the Mitakshara and the Mayukha. But I ought to point out that it was when Sir Michael Westropp became Chief Justice in 1870, that a drastic turn in the tide of Hindu law manifested itself. He had risen to the Bench after an extensive practice for years at the Bar; he had known much about local usages; he had cultivated the friendship of enlightened-oriental scholars like Dr. Bhau Daji. He almost revelled in the solution of a tangled question in Hindu law. Though unacquainted with sanskrit, he laboured hard to get to the heart and principle of every text; and it was in his time that the High Court led the way for itself and other High Courts in India in affirming boldly what till then had been a matter of great doubt and difficulty—women are as much entitled to rights of inheritance under Hindu law as men. To us in these days that decision may seem nothing

out of the common. But if we bear in mind the legal prejudices and social view of the time, the tendency of the Privy Council then to look at every question of Hindu law with the eyes of Raghunandan and Jimuta Vahan of Bengal, and the timidity of Judges in Bombay, we should be able to form a just idea of Sir Michael Westropp's heroic service to the cause of progress in this Presidency. The question as to the capacity of women to inherit depended on a number of conflicting authorities and texts and of these none was more puzzling than a vedic text which said that "women are devoid of organs of senses and therefore not entitled to share". Some construed the premises as meaning that women had neither body nor the soul as men had; and the conclusion as laying down with, being unlike men, women could not be heirs. Others held that women were more delicate in body than men and that therefore they were not entitled to participate in the enjoyment of property. Almost all seemed to concur in the conclusion.

AN EXAMPLE TO OTHER COURTS

Sir Michael Westropp with his legal genius struck out a path of his own ; and his judgment, a learned dissertation on the subject, is a striking example of the daring of a Judge who knows how to make the law bend to the cause of justice. The Vedic text he explained to mean that women were not fitted to drink the Soma juice and therefore were not entitled to share in that drink, not in property. And as was his wont whenever he wanted to prevent Privy Council from upsetting him, he wound up his judgment by saying in effect : " Let the Bengal and Madras laws be what they will, this has been for years and therefore must be our Bombay Law." That decision went up in appeal to the Privy Council and it was feared that owing to that Council's Bengal leanings in questions of Hindu law, it must be upset. But the decision was affirmed

and as we read the judgment of the Privy Council it appears as if it said " Sir Michael Westropp knows all about his Presidency ; his colleague Mr. Justice West is author of a digest on Hindu law. They must be right. Let us leave them alone." This decision marks in the history of the High Court a distinguished stage in the progressive spirit which has governed its rulings in questions of Hindu law ; and I should venture to affirm that it set the example to other High Courts and since then they too have been more liberal than narrow in the administration of Hindu law.

FUNCTION AND INFLUENCE OF THE COURT

These are but a few of the many leading lines on which the course of the High Court of Bombay has run during these 50 years of its career. Some say that a High Court must be the handmaid of the executive ; others that it exists to guard the rights and liberties of the people against the encroachments of arbitrary power. It is His Majesty's High Court and its function is to stand between the Executive and the people and between subject and subject and administer His Majesty's law. But behind and beyond this function is the influence which the Court has exercised imperceptibly over the social transformation of His Majesty's subjects, understanding the word social not in the narrow sense in which it is generally used in this country but in the sense comprehending life, individual and corporate, as a whole and in all its aspects which make for modern civilisation. He who defined a lawyer as a social scavenger probably meant that as a sarcasm. But lawyers need not fear the definition. If as Sir Henry Sumner Maine said, it is true that the British power gradually metamorphoses and dissolves social ideas and forms underneath it more by its indirect and for the most part unintended influence, it is even truer of the power that is represented by its judiciary. In

that respect as in other respects — in the sphere both of its direct and its indirect influence we may well say on this occasion of the Jubilee of His Majesty's High Court of Judicature at Bombay that its record on the whole speaks true. May it always speak so !

* The article written by the late Mr. Justice Chandavarkar on the occasion of the Jubilee Celebrations and appearing in the *Times of India* of August 8, 1912 is reproduced here by the courtesy of the *Times of India*.

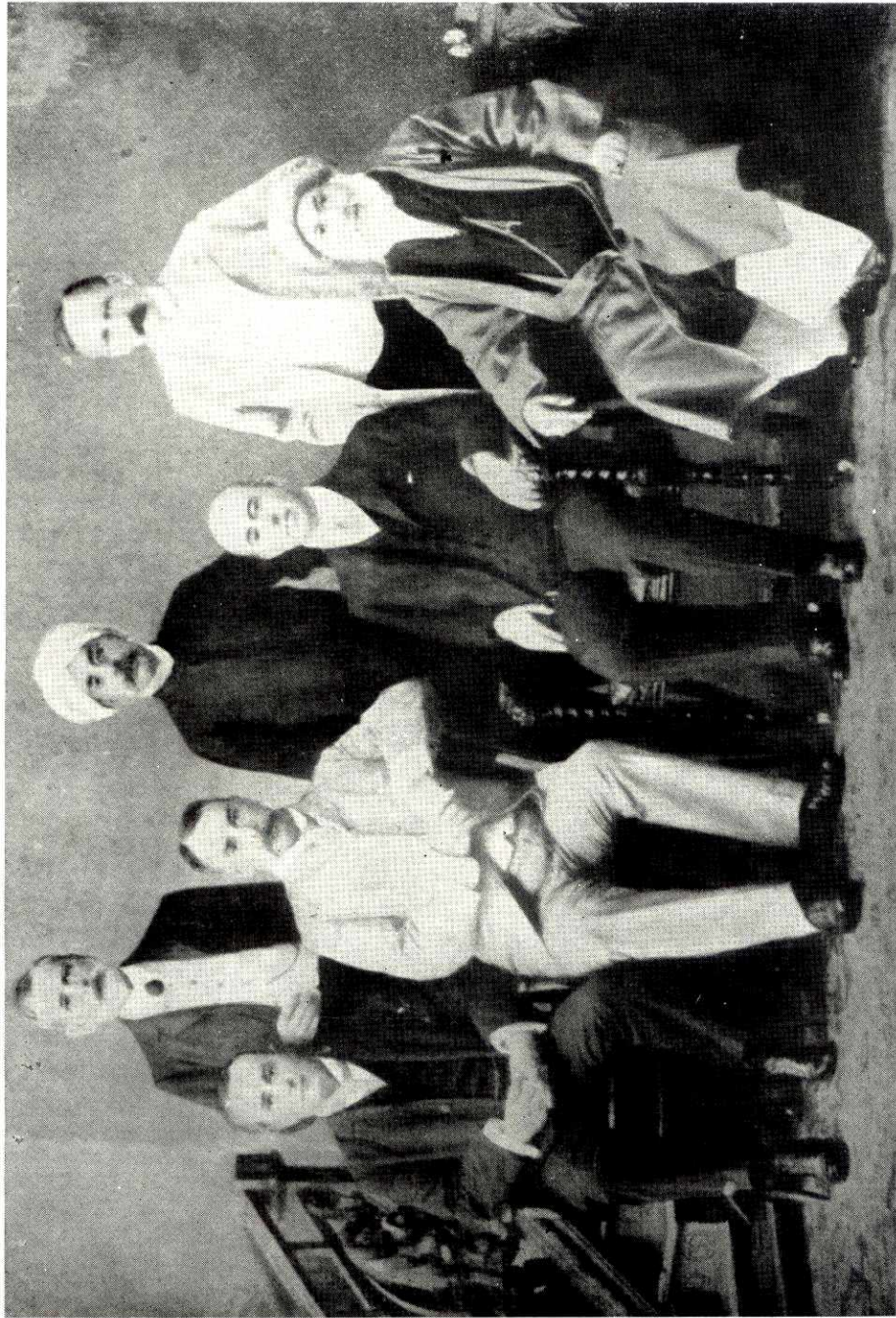
Some Judges of the High Court

1894



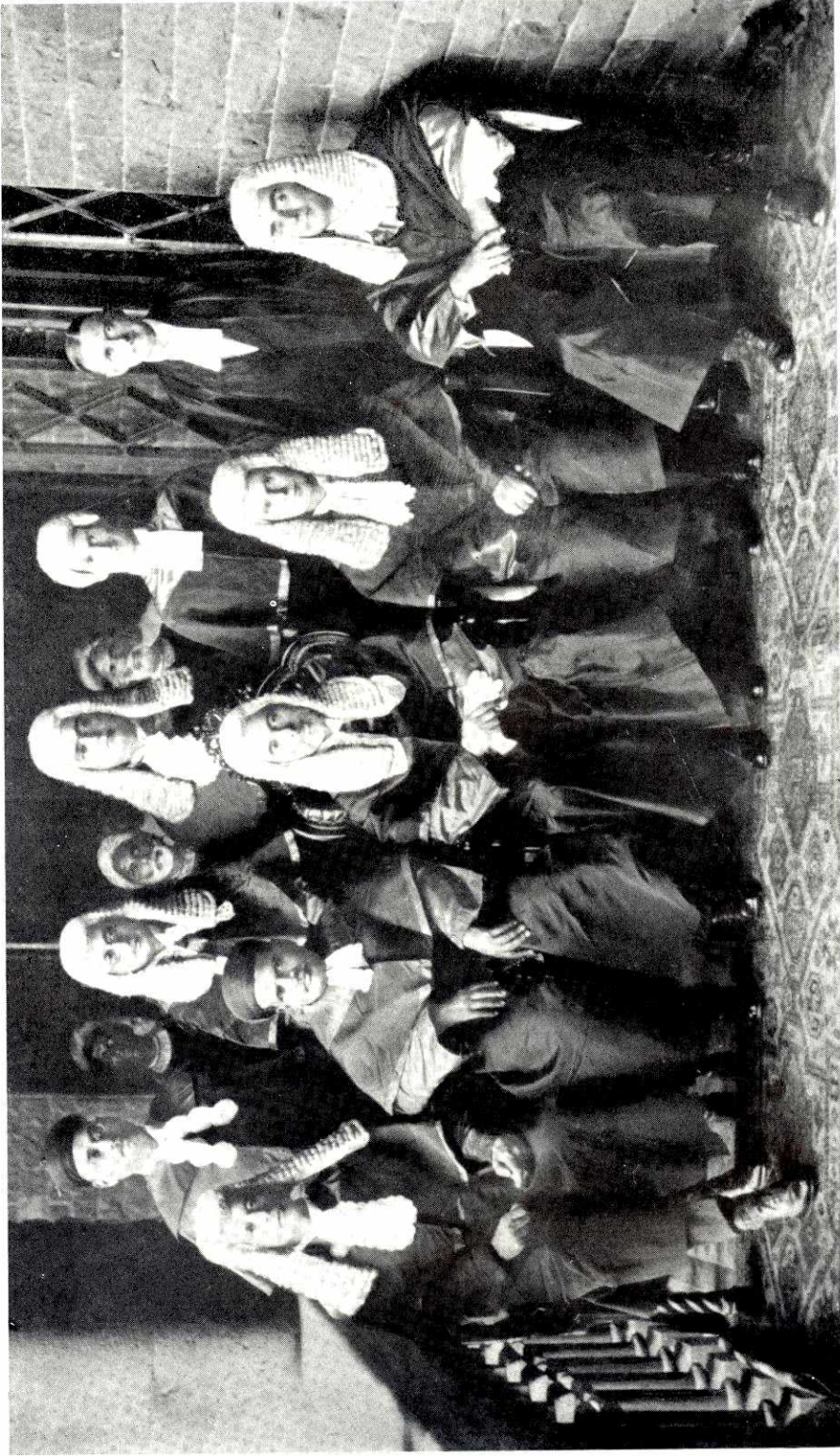
*Sitting (Left to Right) : Farran J., Sir Charles Sargent, C.J., Bayley J.
Standing (Left to Right) : Candy J., Ranade J., Jardine J., Parsons J.*

1906



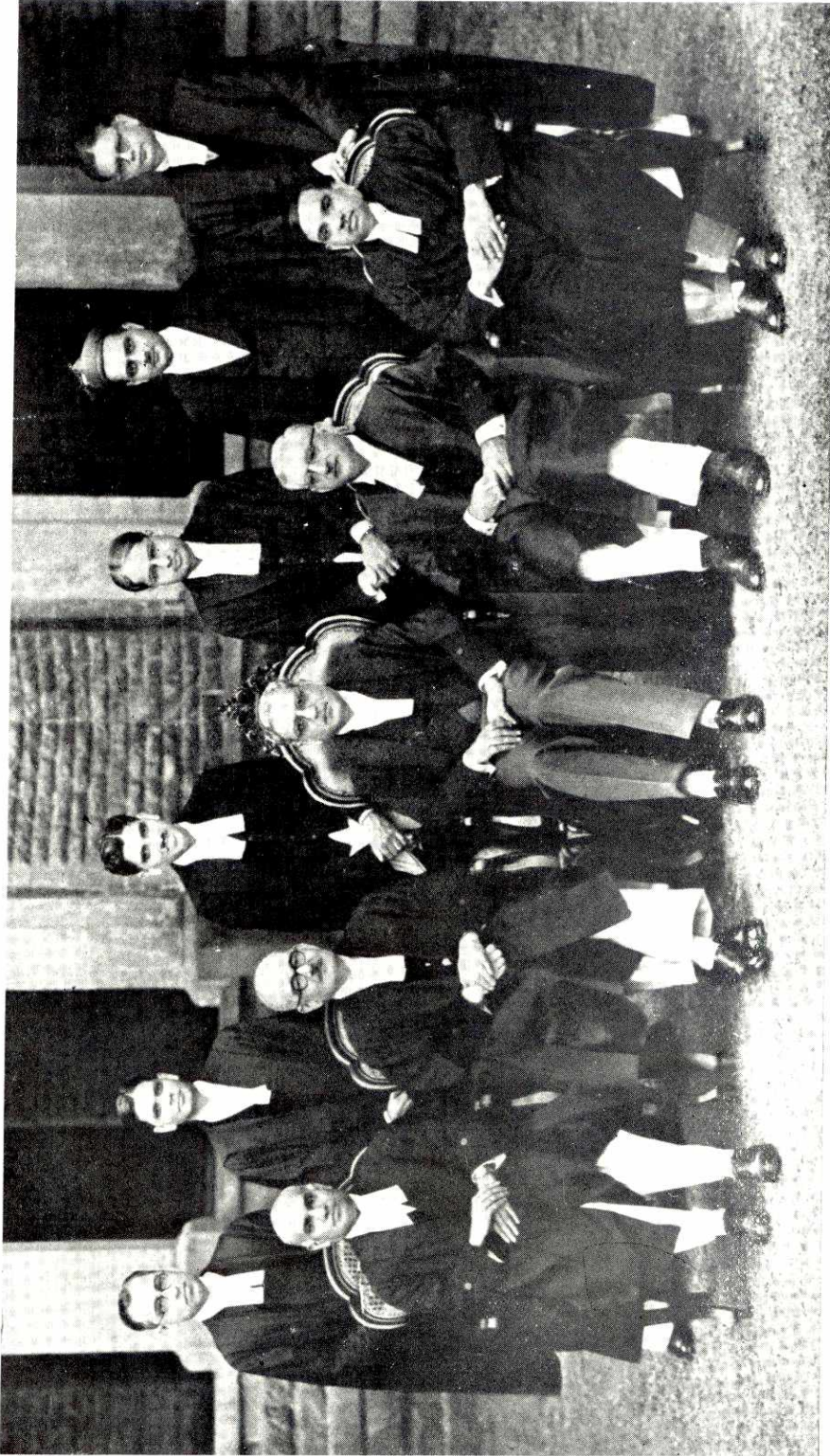
*Sitting (Left to Right) : Russell J., Batchelor J., Sir Lawrence Jenkins, C.J., Badruddin Tyabji J.
Standing (Left to Right) : Aston J., Chandavarkar J., Batty J.*

1926



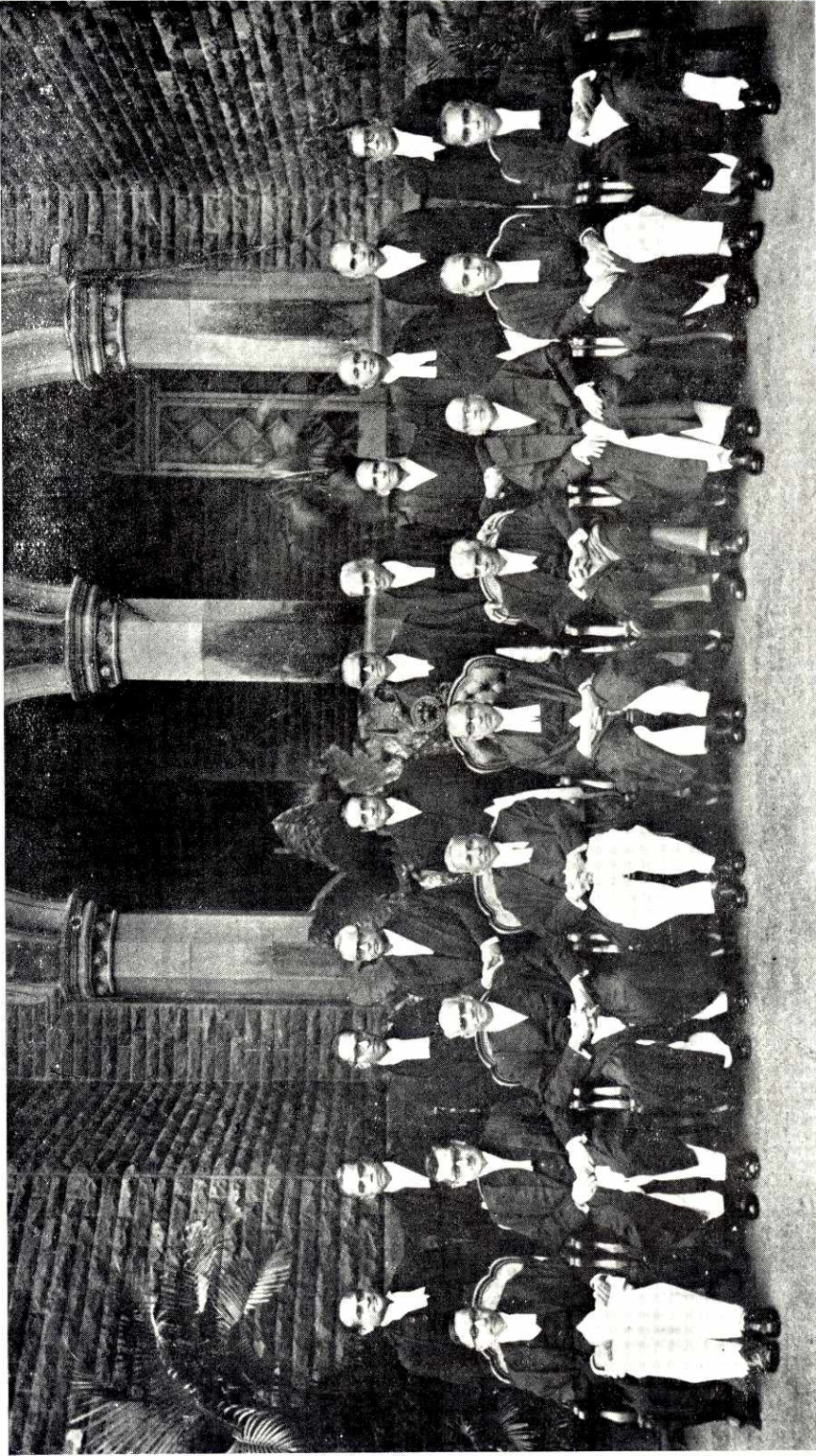
*Sitting (Left to Right) : Crump J., Shah J., Sir Amberson Marten, C.J., Fawcett J., Kemp J.
Standing (Left to Right) : Patkar J., Talyarkhan J., Mirza J., Blackwell J., Baker J.*

1950



*Sitting (Left to Right) : Rajadhyaksha J., Weston J., Chagla C.J., Coyajee J., Bhagwati J.
Standing (Left to Right) : Chainani J., Dixit J., Baydekar J., Gajendragadkar J., Tendolkar J., J. C. Shah J.*

1960



*Sitting (Left to Right) : K. T. Desai J., Kotval J., Tambe J., Mudholkar J., Chainani C. J., S. T. Desai J., Gokhale J., Datar J., Shelat J.
Standing (Left to Right) : K. K. Desai J., V. S. Desai J., Tarkunde J., Badkas J., Miabhoy J., Mody J., Patel J., Naik J., Raju J.,
Patwardhan J., Shah J.*

“SOME MEMORIES” OF SIR AMBERSON MARTEN

MY good fortune was to be a High Court Judge from December 1916 to June 1930 and Chief Justice from June 1926. It was a period of great and rapid changes. The rising Indian members of the Bar included the following remarkable men, namely, Bhulabhai Desai, Chagla, Hormazdyar Coyajee, Jayakar, Jinnah, Kanga, Kania, Mulla, Sir Chimanlal Setalvad and Motilal Setalvad. Many of them became leaders of their political parties. An early task assigned to me was Original Side procedure. But my proposals for the originating summonses were modified as the plaint (resembling the old Chancery Bill of Complaint) was retained. It was a lesson that English reforms may not be wholly suitable for India.

I next recall the chaos caused by the reduction of the rupee from about 2 Sh. 4 d. to 1 Sh. 4 d. It led to a flood of litigation which swamped our Court and we never recovered in my time. The piece goods market was heavily hit. In the motor car trade, purchasers from importers repudiated their contracts.

Our proposals for more judges had a lamentable history of frustration by opposition and delay. So it still took over three years to get a judgment, and curiously enough, criminal work at Sessions also increased and practically took up all the time of one judge. And the revival of inspection of the District Courts led to long absences of another judge.

A useful reform was a new post called Court Receiver and Liquidator. He took over the normal work of private Receiver and Manager appointed by the Court. The arrears in accounts and inquiries were ended by a rapid Commissioner.

In the Bankruptcy Court there were heavy arrears. But on appointment there, Mr. Malbari (the former Prothonotary) successfully tackled them.

The appointment of shorthand writers for each Original Side Court was most helpful, and here I noted the good work of the Court Translators, despite the seven main languages in use. Challenges were made and then the opinion of the Chief Translator was normally accepted. Marawadis employed their own translators. Nobody else knew their script.

Income Tax work also increased and took the time of two Judges. Our only jurisdiction was on points of law on a case stated by the Commissioner. But in some cases the facts were complicated, huge sums were involved and the new legislation was obscure.

A special tribunal on compensation for commandeered ships was an interesting novelty, although it only sat once under War Statutory Regulations. Shipowners obtained nearly the capital value of vessels for their temporary use.

In my last year I visited officially some District Courts—the first Chief Justice, I think, to do so. It was interesting and instructive to me.

At Poona I gave evidence before the Simon Commission in support of our Memorandum. Time has disposed of the matters then considered, including a Supreme Court. But I should mention the great courtesy shown to me as representing our High Court.

I also gave evidence in a Government inquiry on High Court Funds. The practice had been for the Accountant General, High Court, to act on the instructions of the Chief Justice.

But these funds had greatly increased following the increase of litigation and Government required their transfer. It was almost my last work.

In Aden the Governor disposed of all legal work, subject to his reference to us. Our loan (with Government sanction) of an I.C.S. officer initiated a great success. But we never got him back. A Court was instituted and also a local Bar. But in my time documents continued to go by mail steamers each way.

Reform was in the air and discussion included the position of the Bar and the existence of the Small Causes Court and a City Court. In my time the dual system of solicitors and counsel on the Original Side remained with (I think) advantage in a big commercial city and Pleaders' prospects improved by their appointment as Advocates after examination. Some restrictions were placed on the admission of Barristers by the requirement of having to read in chambers.

Our Court hours also came under review. They started earlier than 11-30 and the Original Side adopted the practice of the Appellate Side in sitting on Wednesdays but not on Saturdays. Both changes were then of importance and were opposed. For many years, my Court adjoined my Judge's room. It had the advantage of refreshing sea breezes in the cold weather. Fans were not then needed. But the view suffered when the buildings were erected on the site of the removed railway. By a coincidence my last day was in that Court as had been my first.

Our administrative work was a heavy addition to our main work of Court work, especially for the Chief Justice. But it was an interesting experience and the Administrative Judge (Appellate Side) lightened the burden.

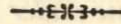
Our Court work brought an astonishing variety of cases. I mention two. In suits affecting an idol's property the idol was

treated as an infant and sued by next friend and defended by guardian-ad-litem. Much charitable property was thus preserved.

In a murder case imprisonment was an alternative sentence to that of death. This humane provision worked well, especially in gang cases like dacoity. Transportation to the Andaman Islands was eventually abolished.

Memories crowd for a place as I endeavour to condense. I recall with gratitude the great help I received especially from the Bar. It was my salvation.

May the Centenary Celebrations be a great success and may this High Court continue to prosper.



THE RIGHT HON'BLE SIR JOHN WILLIAM FISHER
BEAUMONT P.C., Kt., Q.C.

IN connection with the celebration of the centenary of the foundation of the High Court at Bombay, I have been asked to record some reminiscences of my time as Chief Justice. This is not altogether easy. I retired from the Office more than 18 years ago, and I have never kept a diary ; moreover " the passing years with gathered dust the cells of memory fill and men forget because they must and not because they will ". No doubt I have forgotten many things, but I will do my best at recollection and will try to resist the temptation, to which all writers of reminiscences are subject, to remember things which never happened.

I was appointed Chief Justice in April 1930. Things had not been entirely happy in the High Court, and the Government of Bombay had decided to secure a Chief Justice from the Bar of England rather than promote a puisne judge from the Bombay or any other High Court in India. So they asked Sir George Lowndes, who had enjoyed a very large practice at the Bombay Bar (and was then a Member of the Judicial Committee of the Privy Council) to suggest names. Lowndes had no wide acquaintance amongst members of the English Bar, so he asked a chancery judge, Luxmore J., to recommend someone from the chancery bar, and someone else to recommend someone from the common

law bar. Luxmore asked me if I would take the post if offered to me, and gave me two days in which to make up my mind. I felt sure that I should enjoy the work and hoped that I could do it adequately, so I agreed to my name going forward. The only stipulation which I made was that the undertaking to retire at the age of 60, usually required from a judge appointed to an Indian High Court, should in my case be extended to the age of 65, in view of my then age, and this was agreed to. In fact, owing to the war, I remained in Office till after my 66th birthday.

I sailed for India with my wife in June 1930, and as I had had no time, to study any Indian law, I provided myself with a copy of Mulla's Hindu Law to read on the voyage, and pretty dull I found it. The night after my arrival in Bombay, the judges gave me a dinner at the Willingdon Club to meet members of the Bench and Bar, with Mr. Justice Madgaonkar, whom I had met in London, in the chair. To my horror I found that on my other side was the author of Mulla's Hindu Law, and I feared a dull dinner. However it did not take me long to discover what a charming person was Sir Dinshah Mulla, and he readily agreed that his work on Hindu Law had not been designed for study in the Red Sea in June. He and I became great friends. After dinner I was introduced to many prominent lawyers of Bombay including the Advocate General, Sir Jamshedji Kanga, P. B. Shingne, the Government Pleader, H. P. Dastur, the Chief Presidency Magistrate, and two distinguished Barristers to whom I talked together, M. A. Jinnah and M. R. Jayakar. At that time they were friends and allies in politics, a situation which did not survive the first Round Table Conference ; but both remained good friends of mine.

At that time there were nine puisne judges, of whom four were from the I. C. S., in the Bombay High Court, and a tenth

Judge appointed annually by the Government of India. The outstanding feature of the work was the appalling arrears of which I had heard something during the voyage from Coltman who was a passenger. It took six years for a first appeal to reach a hearing, and on the Original Side cases which had been set down more than six years ago were still awaiting trial. It was obvious that in many cases this would involve a denial of justice. Important witnesses might have died or left India, and a witness still available might have forgotten the facts, and be tempted to rely on his imagination to fill the gaps in his memory. I took what steps I could to satisfy myself as to how many of the old cases were still effective, and then approached the Governor with a request for more judges. Sir Frederick Sykes was not sympathetic, and told me that his Government was not satisfied that in the recent past the best use had been made of the time of the judges and that anyhow Government had no money, so I must get along with the existing number of judges. So the arrears remained a problem until Lord Brabourne came out as Governor some three years later. By what I have always regarded as a direct dispensation of Providence one of the old cases awaiting trial related to a dispute about racing, a subject on which the new Governor was keenly interested. He was told about the case by one of the stewards, and was horrified to learn that it had not yet been heard in the High Court, though started more than five years previously. When he asked me how this came about, I explained the position and told him that, though we were keeping abreast of the work, we could never clear the arrears without more judges. So Lord Brabourne gave me two extra judges for two years, and with their help the arrears were cleared off.

In my early days I had some friction with the Government of Bombay, but it would serve no useful purpose to recall the details, especially as the recital could only be one-sided. That wise man, Sir Edward Chamier, the legal adviser to the India Office, warned me that if ever I felt tempted to a fight with Government I must remember that Government had the money, and I had none, so I should probably be beaten. I bore that advice in mind, and was careful in choosing my ground before engaging Government.

One result of the arrears was that all the judges had to work extremely hard. It was almost unknown for a judge's list to break down. I have no recollection of ever leaving the Court early because I had finished my list. I am afraid that we must have put the public to much inconvenience by having to spend days in Court waiting for a case in the list to come on. But Indian litigants are very patient and I had few complaints.

Another result was that I early decided that I could not often afford to reserve judgment. Fortunately giving judgment at the conclusion of a case suited my temperament, because, after hearing a case adequately argued I seldom felt any doubt as to what the decision should be, and the practice has advantages. If judgment is given at the close of the case there is no risk of the judge forgetting the points argued before him ; and there is no danger of the unsuccessful litigant suspecting that the Court has been influenced by something which took place after the close of the case. But if a judge is to give judgment at once it is essential that he should have a strong and reliable bar. If he thinks that counsel in the case have not got to the bottom of it, he must perforce reserve judgment and look into the law himself. In Bombay we had a very good bar, and I have always realised the immense debt of gratitude I owe to them for their

assistance. The old race of English Barristers who came out as young men and made large fortunes in Bombay, men like Inverarity, Lowndes, Strangman and many more, had died out. The only Englishman in my time with a really large practice was Coltman. But Indian Barristers adequately filled the gap. On the Original Side the standard of advocacy amongst the leaders was really high and many juniors showed great promise. In later years when I was sitting in the Judicial Committee of the Privy Council there used to appear before us in heavy cases the cream of the English Bar, but I often thought that the leaders of the Bombay Bar would not have been outclassed. The late B. J. Desai with his keen brain, persuasive address, and skill in selecting the right points to argue would, I am sure, have held his own in any company. And there were others of whom the same might be said whom it would be invidious to mention by name. On the Appellate Side the standard of pure advocacy was not, I thought, so high, but the advocates knew their law and were always most helpful to the Court.

The administrative work seldom gave me much trouble. On the Original Side I had as Prothonotary first R. B. Patel and then S. J. Rahimtoola, both very competent and easy to work with ; and on the Appellate Side I had competent Registrars. I found that by getting to the Court an hour or so before I was due to sit and occasionally staying late in the evening I could get through the work without encroaching on judicial time. The posting of District and Assistant Judges to suitable districts I regarded as important. Most of them had little time for civil work, but by frequently taking criminal appeals I got to know their work, and could judge their abilities and judicial qualities.

In the years 1930 to 1943, which covered my span of duty, there were political troubles which resulted in a good many

convictions on charges of sedition, and many such cases came on appeal or revision to the High Court. It was of course inevitable that judges, whether English or Indian, would have their own political sympathies, which had to be suppressed on the Bench. I only know of one case in which a judge allowed his political sympathies to influence the exercise of his judicial discretion. One thing the Bombay High Court, unlike some other High Courts, insisted upon was that an Advocate convicted under the criminal law and sentenced to imprisonment should not after serving his sentence be deprived automatically under the disciplinary powers of the Court of his right to resume practice at the bar. We refused to take disciplinary action unless we thought that the conduct of the Advocate had shown him to be unfit to remain a member of the bar, and that a too enthusiastic assertion of his political opinions did not disclose such a defect. I think that view was right, in fact I wrote a judgment on the point, and it saved much bitter feeling ; but not every one agreed with it.

The only case in the High Court in my time on which I would say a word was the decision of a Full Bench, over which I presided, holding that Prohibition, as introduced by the Government, was illegal. I suspect that there was some misapprehension in the minds of the public about that. I myself always thought the policy of Prohibition a mistake, and probably most of the judges took the same view. I do not under estimate the evils of drink, but I think the remedy lies in education. I agree with the view expressed in the last stanza of Kipling's poem on Prohibition to be found in his volume intituled " Debits and Credits ":

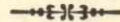
“ Cease then to fashion State made sin,
“ Nor give thy children cause to doubt
“ That virtue springs from iron within,
“ And not from lead without ”.

I believe in the iron of self-discipline, rather than in the lead of compulsion, but then I am not responsible for Government. However, when a judge has to decide on the validity of a piece of legislation his view as to its wisdom is irrelevant. The Government had not introduced prohibition by an Act of the Legislature, but sought to impose it by a notification under a sub-section of the Akbari Act of 1878. All that we held was that the language of the sub-section was not strong enough to support the burden sought to be placed upon it. Shortly before I left India on retirement I visited the gaol at Yeravda, as I often did when in Poona. I met in a separate and relatively comfortable part of the building several old friends who were in detention for activities under the "Quit India" campaign. Amongst others I talked to was B. G. Kher who had been Prime Minister when Prohibition was introduced. I asked him how he spent his leisure in gaol and he replied "In meditating on means to defeat the High Court when next we introduce Prohibition". My answer was "Try avoiding short cuts".

B. G. Kher was one of the most delightful men I have ever known. Very intelligent with a keen sense of humour and devoid of any element of self-seeking ; he was one of those who had greatness thrust upon him. I first met him when as a Bombay Solicitor he had written some articles on the reform of legal education which the Vice-Chancellor of Bombay University brought to my notice with a strong recommendation that I should take the matter up. There was no doubt that legal education was in a most unsatisfactory state so I appointed a committee representing the High Court, the University, and the Bar Council to consider the matter and to make recommendations. Kher was a member of the committee and the conclusions ultimately reached were based largely on his suggestions. The

proposals of the committee involved the formation of a full time Law College, but when I approached Government with a request that they would provide the necessary money Lord Brabourne told me that he was not anxious to touch so thorny a subject as legal education, that he anticipated that within a short time a Congress Government would come into power, and that the matter had best be left to them. This prophesy of the Governor proved correct, and a Congress Government came into power with Kher as Prime Minister. I had no difficulty in getting him to provide the money, and Bombay Law College owes more to him than to anyone. In later years Kher came to England as Indian High Commissioner to the United Kingdom, and I was delighted to renew our friendship. I am sure that his death, not long after his return to India, was a great loss to the country.

I will close these reminiscences by recalling an incident which occurred recently. One of my fellow Benchers at Lincoln's Inn asked me which of the three phases of my professional career, practice at the bar in England, being Chief Justice of Bombay, or sitting on the Judicial Committee of the Privy Council, I enjoyed most, and I replied without hesitation "Being Chief Justice of Bombay".



SIR LEONARD STONE, Kt., E., Q.C.

ON the occasion of the Centenary of the Bombay High Court, the Chief Justice of Bombay has invited me to write something about those four stirring years, when I had the honour of holding his high office.

The predominant features of my short sojourn in India were speed and change. I was probably the first and certainly the last Chief Justice of Bombay, to arrive to take up his office in an aircraft of the Royal Air Force.

Met at the airport by my predecessor, Sir John Beaumont, I was informed by him during our drive to the Chief Justice's house on Malabar Hill, that the Bar at Bombay had passed a resolution of protest at my appointment. I was horrified. I had been given no idea in London that my appointment would not be popular.

That same afternoon, I left for Poona, to be sworn in and to stay with the Governor, Sir John Colville (afterwards Lord Clydesmuir).

At Poona, I was to meet the leading members of the Bombay Administration, who, in default of Indian Ministers, were senior British members of the Indian Civil Service. From them I learnt something of the political climate, of the "Quit India" movement, and of the fact that many of the Indian leaders were held in prison as detenué, without trial, and that in these and other matters which arose from emergency war-time regulations, there

was bound to be a divergence of views between Government and the High Court. It all seemed to me to be a rather unfavourable start, particularly as, in 48 hours of my return to Bombay, Sir John and Lady Beaumont left India, and I found myself alone in that large rambling house, which, in those days, including Chobdars and Peons, had a staff of 22. But they caused me no trouble at all. Come as I had done from the austerities of war-time England, I was sumptuously cared for !

Very soon the Judges of the High Court began to call, and my grave apprehensions started to dissolve. I was to make so many good friends in India that I cannot, in this brief article, mention nearly all of them ; but those who are not named and who read this, will, I am sure, understand that I have not forgotten them.

Sir Harilal Kania was the senior Puisne Judge, a man of great experience, charm and sagacity of spirit and who was the obvious successor to Sir John Beaumont. He was of course very disappointed and intended to resign ; but at our first meeting, sitting together alone, looking over the ocean, I knew that my companion was a man of rare qualities and that, if only I could persuade him to reconsider his decision about resigning, I should have a very experienced senior Judge, a loyal colleague and a good friend.

I retain a most vivid memory of many unforgettable scenes and occasions of my time as Chief Justice of Bombay : one of the most vivid is taking my seat in the Appellate Court for the first time. The Court was absolutely packed, with rows of people standing at the back — all had come to have a look at the new Chief Justice ; but I was happy and confident, for Sir Harilal Kania had reconsidered his decision and I had him seated at my side, a sure guide and true supporter.

Other senior Judges would sit with me in the Court of Appeal and two of them must be mentioned — Mr. Justice Divatia and Mr. Justice Lokur, because both of them took immense trouble in explaining to me and teaching me Hindu Law and customs, subjects in which I still entertain a great interest.

As soon as I had got settled in at Bombay, I started on tours of the District and Subordinate Courts. The first tour was to Poona and this was accomplished before Lady Stone joined me on the 23rd December 1943.

No one could understand the importance of the work of an Indian High Court, without having an insight of the Indian District and Village life ; for it is against that setting that most of the Appeals and Confirmation Cases take on their human shape and must be framed.

We found the tours of absorbing interest. Of course, there was much poverty, disease, overcrowding and always the struggle for jobs. These were the sad things. But there was a counterpoise which we found inspiring. The steadfastness of religious outlook, a faith in justice, which almost invested it with a spark of Divinity, the lavish welcome, the keen sense of hospitality, a whimsical sense of humour and the playful grace of Indian children — and then there was the stirring beauty of the Indian countryside itself, which is, in so many places, enriched by buildings, which give tangible proof of India's long and important history. Every tour was spectacular, none is forgotten ; but the most spectacular of them all was my last tour to Karwar, which I will mention in its sequence.

By the end of March 1944, my wife and I were looking forward to our first Summer Vacation. We were to go to Mahableshwar, and all arrangements had been made. It was the last day of Term, the 14th April 1944 ; for me it was an unusual day, because the appellate work being finished, I was helping another Judge by

doing one of his cases, and it was the first time I was sitting as a Judge of first instance ; suddenly there was a great rumble and rush of sound, the whole High Court building trembled and there was the tinkle of breaking glass ! To the immense credit of everyone in the High Court, there was no confusion, work went on and was finished. Some of the staff had been up on the roof and reported that an enormous column of black smoke was rising from the Docks. The s. s. " Fort Stikme ", a ship laden with nearly 1,500 tons of explosives, had blown up.

That night, with three companions, Mr. Bhulabhai Desai, Mr. Justice Chagla (as he then was) and Sir Cawasji Jehangir, representatives of the three great communities of Bombay, I went down into the Docks — down till we could go no further, for the heat of fires drove us back. There were shocking sights, for hundreds of people had been killed. Torn and mangled bodies were lying about everywhere and mutilated dead men were floating in the waters of the Docks ; the whole ghastly holocaust was lit by burning ships and the fierce fires raging in the godown area.

I shall for ever remember the fortitude of my three companions ; for they were men of peace, who had not seen such horrors before. Their valiant bearing was an inspiration to the tired Indian fire-fighters, hard-pressed men to whom their presence gave the stimulant for renewing their energies to put out the fires.

On the next day, the Viceroy (Lord Wavell) arrived, and I was asked to undertake the task of being President of the Commission of Inquiry into the disaster. That was the end of our Long Vacation and of all our holiday plans. Very loyally my wife stayed on with me in Bombay throughout the hot weather, and, at that time, we had no air-conditioning in our house, so that the stifling nights had to be endured to the flap noise of the fans and the movement of mosquito netting.

The Commission was to take me away from the High Court for nearly five months ; but I was fortunate in my colleagues, Mr. S. B. Dhavle, a retired High Court Judge from Patna, and Rear Admiral C. S. Holland of the Royal Navy. We were assisted by six Assessors and four expert Advisers. The High Court was well represented by one of our Secretaries, Mr. Sarosh H. A. Vakil, five Shorthand-Writers and two Clerks and my brave Chobdar Adamsha Mahomedsha, who subsequently lost his life protecting his Chief Justice (my successor, Chagla).

The Commission heard 259 witnesses and issued two Reports, the first on the causes of the disaster and the second on the adequacy of the action taken before, during and after the explosions. It was a tragic tale. Of the 156 Officers and Firemen of the Bombay Fire Services, who attended the fire in the ship, 65 were killed and 80 injured by the first explosion. Space does not permit that I should expand the dreadful count : but I will quote one short passage from our first Report :—

“ The explosion was a terrific detonation spreading destruction over a wide area. There was extensive fragmentation of red hot metal from the ship, which destroyed all who stood in its path. Vast quantities of debris and blazing cotton was cast upwards to fall and spread a sea of fire over sheds and ships. s.s. Fort Stikine glowed red through a clack of black fog, so that none of the few who miraculously escaped the blast have been able to give any description of the shattered ship ”.

At last the Reports were finished, and, after a month back at work at the High Court, we were indeed glad when the October Vacation released us for a short holiday at Mahableshtar. But hard work was not the only portion of a Judge, for there were some relaxations too. Mine were golf and sea bathing, and many happy recollections crowd back of golf at the Willingdon Club, at

Chembur, at Mahableshwar and at the Lodi Course at Delhi, and of the odd matches played at Nasik and other country places. Whenever I was in Bombay, I nearly always played a short round of golf before breakfast each morning ; after being out on the first tee so early that we had to wait for the mist to clear, unless you were prepared to risk losing your ball by driving into it, and there were those enjoyable Judges' foursomes on Saturday mornings, and many were the times when some judicial conundrum was debated on a fairway.

Bombay has some excellent sea bathing, Government House beach, out on Colaba point, and those extensive sandy beaches flanked by cocoanut palms at Juhu. Further afield there are fine beaches near Alibag and, a bit to the north, Janjira, where I spent a delightful visit as the guest of the Nawab. But Lady Stone's health had suffered from spending the whole of our first hot weather in Bombay, and, when we came home on leave in 1945, she stayed in England to recuperate and until I could get some air-conditioning installed in Chief Justice House. While she was away, I shared the house with Mr. Justice Rajadhyaksha and his family, and there were happy evenings when we would sit together on the verandah and talk philosophy. Then there was the fabulous occasion when His Highness the Aga Khan was weighed against diamonds at the Brabourne Stadium in the presence of a vast concourse of his followers. As the weighing progressed and the hand of the giant recorder moved towards 240 lbs., his supposed weight, excitement knew no bounds. Part of the crowd surged forward and broke the crush barriers : there might have been a very ugly accident : but, with an imperious gesture, His Highness turned towards the spot and every man, woman and child stood still. I had never seen such instantaneous obedience from an undrilled crowd before — nor have I since.

The work on the Explosions Commission had brought me into close relations with the Royal Indian Navy, and I was invited to take a trip in a warship. It was a great success from my point of view, as I have always been a good sailor, and I much enjoyed the experience of seeing young men of different communities working cheerfully together in very close quarters. From the Navy's point of view, the warships had to put to sea in any event for training and the sailors seemed to like having a Judge on Board. I had completed the tours of the District and Subordinate Courts except those in the Karwar District. That tour had been postponed because the overland route to reach Karwar was not very easy : and, when the Navy offered to take me there in a warship, I at once accepted. But there was one condition. Japanese submarines were still supposed to lurk in Indian waters, and the movement of all warships was cloaked in strict secrecy. So I could not say I was coming by sea, and had to lay on a complete plan to arrive by land at about 11 a.m. one morning ! Instead, the warship stood off Karwar at dawn that day and, as the light strengthened, we steamed into the harbour with our whistle blowing, and all the sailors looking very smart in their freshly pressed white uniforms. The whole population poured down to the water-front, for it was the first time a warship had come into the harbour since the war started in 1939. My Chobdar had been laid low throughout the voyage by sea-sickness, and it had been arranged that one of the sailors should dress up in his robes so that I should have an attendant. But the shrill blasts on the ship's whistle seemed miraculously to restore the Chobdar to perfect health, and he suddenly appeared on deck in his red robes. That splash of colour amongst the white clad sailors must have conveyed the truth to those on shore. The Chief Justice was about to arrive in a totally unusual and unexpected manner and most of the principal people were

assembled on the quay by the time a boat had been lowered and the Indian Captain of the ship, the Chobdar and myself and my luggage had been rowed ashore by some of the sailors. Of course, the programme was a bit put out of tuning for I had arrived several hours too soon: also, as soon as the Captain had put me ashore and introductions had been made, he returned to his ship and put to sea again, for, in an unprotected harbour, the ship would have been a sitting-duck for any passing submarine.

Only the Collector, the District Judge and the Chief of Police were let into the secret of the day and time the ship would return to pick me up. The result of this overturning of the timetable of my visit was to replace it by an atmosphere of delightful informality. But the kind people of Karwar were worried. When were the garlands to be prepared for my departure? The day was not difficult to guess and, on its morning, the rumour spread that I should be going late in the afternoon. As soon as the warship was sighted, everyone turned out to watch. Even the profusion of floral honours which had been so generously presented on previous occasions seemed to be exceeded. The Captain was rowed ashore and agreed that the ship might stay for just one hour, so we were enabled to invite some of the chief people of Karwar to come on board for a cup of tea and to see the ship. There was tremendous enthusiasm. All the garlands with which I had been presented were rowed out to the ship. While we were having tea, the sailors festooned them over the guns, so that we steamed away towards the setting sun to the scent of flowers, with grateful hearts and the decks lined with sailors.

Towards the end of 1946, a much happier relationship was established between the British Raj and the Indian Congress Party, which enabled Indian Ministers to take Office again and

I became very friendly with many of them ; again at the risk of leaving out good friends, I can only mention those of them with whom I came most in contact ; Shri Mangaldas Pakvasa, Shri B. G. Kher, and Shri Morarji Desai. We visited each others' houses and, I think, found a close understanding of each others' point of view.

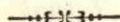
By 1947, everyone knew that the British really were going to leave India. There were undertones of communal strife and of partition. It was a time of hopes and fears ; of much talk and many parties. But, for all those who were responsible for the preservation of law and order, there was a feeling of tension and anxiety, and, when the Long Vacation came, I arranged to get away by taking part of my holidays aboard a warship which was to go to Gwadar, on the Buluchistan coast, to make a survey of the ocean bed, which had been disrupted as a result of an earthquake. Every Officer and sailor on board responded loyally to my request for anonymity. I took none of my staff with me, dressed as a Yachtsman and, when we went ashore, I was just " a friend of the Captain ". It worked splendidly and was a most restful change ; it was also very interesting and I learnt a lot of things which people would have been unlikely to have told a Chief Justice !

Reading through what I have written, I am struck by the fact that I have said nothing about my work in Court — of course, I did some, and the Bombay Law Reporter must bear me witness. But although I recall many cases, sitting in Court at Bombay does not differ very much from sitting in Court at London or in Lancashire, and the most poignant recollections of my four years in India — and that is what I am supposed to be writing about — find expression outside the High Court Building. Yes, all, except one very great occasion.

That unforgettable night when power was transferred, the 14th/15th August 1947, when all the aspirations of a great people to be free, flowered and were consummated in those tense minutes when the hands of the clock in the Sessions Court, and the clocks all over India, rose to greet the midnight hour.

There was rejoicing and triumph too : but triumph tinged with the ache of old friends parting. Emotions poised uniquely, blended in awareness, which required worth, where worth had striven.

So closed the cycle of an era, with an understanding, which men of different races had not known before.



REMINISCENCES OF Mr. M. C. CHAGLA

I have to carry my mind back almost half a century to recall my first visit to the High Court. This was in November 1916. I was still in School. I had read in the papers that judgment was going to be delivered by Batchelor and Shah JJ. in the Criminal Revisional Application preferred by Tilak against an order of the District Magistrate of Poona to enter into a bond in certain amount for disseminating seditious matter in speeches delivered by him advocating Home Rule for India. I remember entering the Court building fairly early with a sinking feeling in my heart as I was entering for the first time this majestic edifice which was responsible for so much of India's legal history and which had given to the country so many statesmen and patriots. The judgment was to be delivered in the 2nd Court. I managed to find a seat in the third row and made myself as inconspicuous as possible—though this was not necessary as nature had made me inconspicuous. Soon the great Tilak came and sat in the second row behind Jinnah, his counsel. I heard the judgment and, without understanding the legal acumen and subtlety, I undoubtedly felt that justice had been done because Tilak had won. I vividly remember how, after the judgment had been delivered, Jinnah turned round and shook hands with Tilak. I might mention that Jinnah had always the greatest admiration for Tilak and even when he foresook the path of nationalism he rarely spoke an unkind word about the great Indian patriot.

From my youngest days I always had a reverence for Tilak, and although I was quite a child, I shared the horror felt by every one at the savage sentence passed by Davar J. in the Sessions Court and nothing gave me greater pleasure as Chief Justice than the unveiling of a tablet to Tilak outside the very Court in which he was sentenced and thus making some atonement for the injustice done to him and the suffering caused to him.

The next time I entered the High Court was almost six years after that in 1922, when I entered as a full-fledged Barrister-at-Law entitled to practise in this august Court. But it is one thing to have the right to practise, quite another to have a practice, as I soon discovered. I had no connections with Solicitors or lawyers. The only lawyer I knew was Jinnah whom I had come to know as a staunch nationalist in the many student movements in which I had participated before I went to England for my studies.

I have never felt more nervous than on the day when I entered the High Court Library. I did not know a soul and no one seemed to be in the least interested in, let alone impressed by, the new Barrister who had just returned from England in the hope of taking the High Court by storm. I want Junior members of the Bar to understand in what a hopeless situation a Junior found himself in those days. Our High Court had the strongest Bar imaginable. Inverarity, Strangman, Sir Chimanlal Setalvad, Coltman, Jinnah, Kanga, Mulla, Bhulabhai Desai and V. F. Taraporewalla constituted the front row. Behind them was the second row among whom were Motilal Setalvad and Munshi and there was still a third line of youngsters like Daphtary who were aspiring to catch up with their elders and seniors. As I contemplated this impenetrable barrier I gave up every hope of ever coming across a Solicitor who would entrust me with a brief. Why should he when so many more experienced men were available ?

To use a stock exchange phrase it was a Solicitor's market and not a counsel's market. And my presence at the Bar only increased the number of superfluous people at the Bar.

There was another serious disadvantage a Junior suffered from in those days. We did not have the innumerable Tribunals which we have to-day before which a Junior can appear and gain experience while he is waiting for his briefs in the High Court. There was not even the City Civil Court. The only Courts were the Small Causes Court and relatively few Presidency Magistrates' Courts. Jinnah's advice to me was to stick on to a 2 Gms. consent decree in the High Court rather than accept work outside even on a handsome fee. He believed in starvation in the grand manner and I successfully carried out his advice.

The leaders of the Bar in those days had their own individual characteristics and their own distinctive style. Inverarity, who was now towards the end of his great career, was gruff, lacked personality and by his manner did not give any indication of a massive and logical intellect. He had a phenomenal memory and I have seen him drafting pleadings while sitting in Court waiting for his case, without even casting a glance at the instructions. Once he had read them he had almost a photographic memory of their contents. I remember an amusing incident about him. He was sitting in the Central Court before Pratt, J. A young man came and handed a brief to him. He untied the tape and read the observations. He then called the young man and told him, in what was a whisper to him but was loud enough for every one to hear, that he was a fool. The young man politely said, "Yes, Sir". After a minute or two something struck him and he recalled the man. He asked him whether he was the Solicitor who had written the observations. The reply was in the negative with a further explanation that he was only the Managing Clerk.

Inverarity turned to him and profusely apologised but added, "Please tell your master that he is a ... fool". He had a passion for bridge where he displayed the same tenacity in his calls as he did in his advocacy with the result that he always invited a double much to the misfortune of his partner. I remember how on one occasion Kanga gave an At Home at the Bar Gymkhana in honour of an important Committee which was reporting on our laws. Naturally, Inverarity was invited and was expected to meet the members and discuss things with them. Inverarity refused to budge from the bridge table preferring that intellectual game to polite conversation with the high and mighty of the land.

Strangman had a hectoring type of advocacy, was rather arrogant and vain, but a great cross-examiner. There used to be a perpetual feud between him and Jinnah, perhaps because both shared a common vanity.

Coltman was hardworking and pertinacious, refusing to give up any point however bad with an innate scepticism of the intelligence of the Judges. He had rather a squeaky voice and many Judges did not take kindly to him.

Sir Chimanlal, whose memory I treasure as he was always kind to me and went out of his way to give me a helping hand, had a most logical and orderly mind. Nothing ever disturbed him or put him out. Even when an important case was called out and Solicitors' clerks were running up and down begging of him to come to Court immediately, Sir Chimanlal refused to lose his poise and would majestically walk to the Court, rather keep the Judge waiting than show any signs of undue haste and hurry. I would not advise members of the Bar to follow his example, because Judges may not choose to wait for them as they did for Sir Chimanlal and might dismiss their case.

Bhulabhai Desai had a subtle intellect, a great gift of language and a wonderful memory. I remember his telling me that when he was a Junior he was working at a brief and making copious notes. Inverarity saw him, asked him what he was doing and took up the notes and tore them across. "Young man, learn to trust your memory". After that Bhulabhai never made notes. I have seen him open the most complicated case without a scrap of paper as an aid to his memory. It is interesting how different lawyers have different methods of making notes. To my mind the most pathetic is the one who cannot utter a single syllable without reference to the pile of papers lying beside him.

Mulla I did not come to know very well as he rarely came to the High Court Library and preferred to remain in his chambers. He was the most learned of all the lawyers practising at the time. He was an eminent and distinguished commentator and his books are even today in every lawyer's library. His commentaries are noted for their lucidity and incisiveness. He was much better at the conference table than in Court and was rather professorial in his demeanour which he maintained during the short time he was on the Bench.

Taraporewalla was rather peppery in his advocacy and when he was convinced of the validity of his point he fought indiscriminately with the Judge, his opponent and even with the Solicitor instructing him. There were few to equal him in the knowledge of first principles and in dealing with a matter which was *res integra*.

Kanga, who is still with us and whom I have therefore not considered in the order of seniority or eminence, was perhaps the most loved among all the seniors. He never lost his simplicity or the warmth of his heart even on the chilliest pinnacle of fame. He is both an able lawyer and a great advocate. When

the decision lies on the border line, there is no one more capable of tilting it in his own direction by the sheer force of his advocacy. He is not learned or bookish, though he has all the cases at his fingers' ends. He has an uncanny instinct of going to the root of the matter with his quick and perceptive mind and his tall figure and the abundance of his gestures soon convinces the doubting mind of the validity of his submissions. It is indeed difficult to think of the Bombay Bar without Jamshed Kanga.

I have kept Jinnah till the last, in whose chambers I was for nearly eight years when I parted from him both in the realm of law and politics. His success was phenomenal from many points of view. His knowledge of law was not very striking, his English was often not the King's English and he did not have a mind which could draw upon a deep knowledge of history or literature. But he had a great personality which overawed the Judges. He would put forward the most fantastic proposition and the Judge would listen to him as if the words came from the oracle of Delphi. I think his greatest quality was his tremendous commonsense and also his art, because it was an art, of presentation of the most complicated and complex case. It was a sheer pleasure to listen to him. Although a poor lawyer, he was a great advocate, fearless, persevering, impervious to the Judge's mood even to the extent of being rude. I have rarely come across a man who was less emotional than he was. I was intimately associated with him for eight long years, but I don't remember ever having a conversation with him which did not relate to law or politics. I was a fairly assiduous worker in his chambers, but used to run away to see the cricket matches. He used to know of my delinquency, but the only remark he used to pass was "What is the score?". He did not care one bit whether Naidu and Amarnath had each

scored a century in a brilliant partnership or each had gone out for a duck. In fairness to him I must recall that he maintained the highest traditions of the Bar, never kowtowed to anyone, always kept his head high, perhaps a little too high, and never gave his friendship to anyone and never asked the friendship of anyone. He was a strange person who went through life a lonely and friendless man, concerned only with his own ego and his own ultimate success. He thought it was unprofessional to solicit work for anyone. And never by word or suggestion did he ever ask a solicitor to brief me even as his Junior. He cheerfully saw me starving and sometimes used to tell me that starvation was a spur to success at the Bar. Needless to say that I was not in a frame of mind to agree with this sentiment. If he had a little less ego and a little more gentleness and kindness, not only would he have been a much greater man but the history of India would have been different. But I must remember that I am not writing a political treatise.

Looking back, I think the first ten years I spent at the Bar were some of the happiest I have ever spent. Although there was the constant struggle to keep the wolf from the door, although competition was fierce and one had to hold on grimly to every step which one climbed on the ladder of success, there was a great deal of camaraderie at the Bar, many lasting friendships were made and, by and large, the highest traditions were maintained. The Bar Common Room was the finest club in the world where one met not only some of the most leading lawyers in India, but also some of the most eminent politicians. I still feel nostalgic about a certain corner in that room where some of us always gathered and where the most sparkling conversation was carried on and no one's reputation was safe. The Solicitors were also a great institution. A long table lay in

the middle of the room and in one corner used to sit the Solicitors presided over by Jamietram who was a great institution.

But there lay a great danger to a Junior without work in those pleasant surroundings. The Bar Room constituted as I have already remarked, the finest club in the world. And it had its insidious effects. One's mind and intellect could go to rust and one might easily forget the habit of hard work. Therefore it is essential for a Junior to occupy his time in something else while he is waiting for his practice to grow.

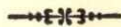
In our time bills, both by the Government of India and the Provincial Government, used to be referred to the Bar Association for its opinion. We used to sit on committees and consider these measures in great detail. It was a very healthy practice which, for some unknown reason, has now been discontinued. After all, there is no better body than the Bar for considering legislation which it will have to interpret before the Courts.

There is also politics and there is journalism. There are also many social and cultural institutions. It would be most unfortunate if lawyers ceased to play an important part in the life of the city. But I hate moralising. This is an article of reminiscences and not a sermon. But I could not help saying a word which might be of help to Juniors who might have to struggle and strive before they make good.

About Judges, we had good, bad and indifferent ones as always happens in a Court. The Junior does not mind any Judge so long as he is patient and courteous. A kind word and a friendly smile transports him to the Seventh Heaven of delight. Why don't Judges realise this? All that a member of the Bar has a right to expect from the Bench is that his point of view has been understood and appreciated. It is not for the lawyer to convert the Judge, his function is purely persuasive, and so long as he can

discharge that function in a pleasant atmosphere he is happy. Nor, may I add, is it the duty of the Judge to convert the lawyer. He is paid, and very often handsomely, to hold on to what seems to be his indefensible position. On the whole it was a strong Bench because a strong Bar always reacts on the Bench and vice versa ; although I must confess there were Judges who were overawed by seniors, Judges who were impatient with Juniors and Judges who once they made up their minds allowed the shutters to go down and no light from any quarter to penetrate. I suppose this is true of all Courts and this is what makes the legal profession so exciting.

A hundred years is a long time in the history of any institution. The High Court of Bombay has had an illustrious and resplendent history. Great Judges have sat on its Bench and distinguished lawyers have practised before it. But ultimately the question that must be asked is, has it earned the confidence of the public ? Has the small man, the humble citizen, the weak and the downtrodden felt that he could safely turn to it for justice ? I think the question must be answered in favour of the High Court. We have had Judges who have fearlessly upheld the rights of the citizen against the State, and we have had lawyers who have courageously stood up against the most autocratic Judge to champion the cause of their clients. Men come and go, but institutions must go on, and in celebrating this centenary of the High Court we can only hope and pray that at the end of the next hundred years the historian will be truthfully able to say that irrespective of human weaknesses the brilliant record of the institution as such was maintained.



Some of the Advocates



SOME FORMER ADVOCATES

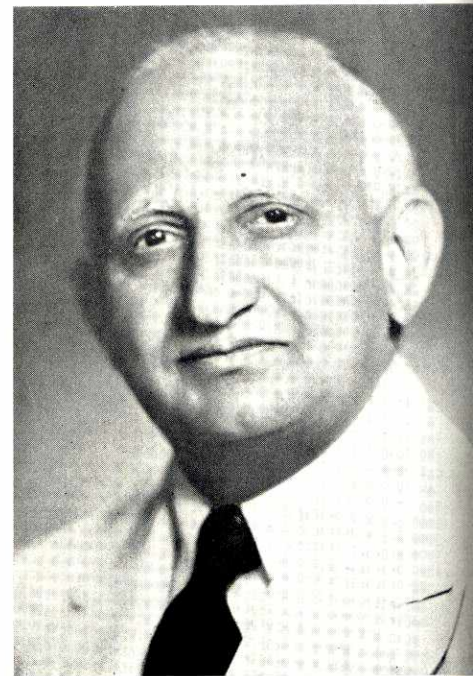
Sir Mahadev Bhaskar Chauhan, Kt.



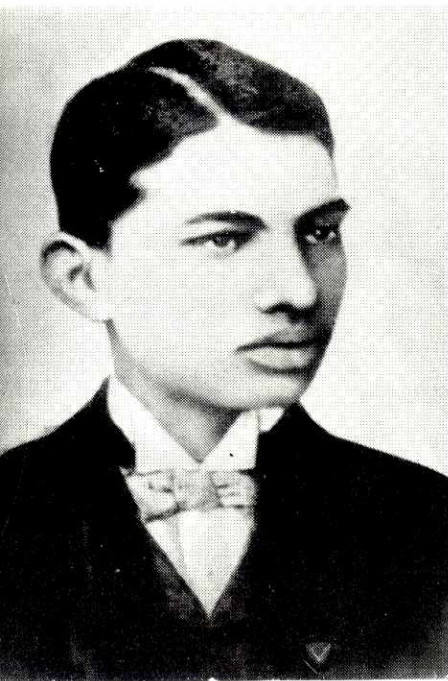
Mr. H. C. Coyajee



Mr. A. G. Desai



Mr. Bhulabhai Desai



Mahatma Gandhi

Courtesy "Mahatma"



Mr. Dadaji Abaji Khare



Mr. V. J. Kirtikar





SOME FORMER ADVOCATES

Mr. V. N. Mandlik



Sir Pherozshah Mehta, K.I.C.E., LL.D.

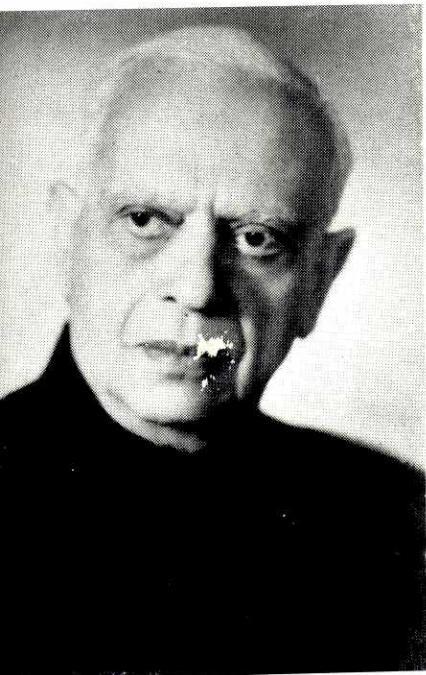


Mr. G. S. Rao



Sir Chimanlal H. Setalvad, Kt.

SOME PRACTISING ADVOCATES



Mr. M. C. Setlavad,
Attorney—General



Sir Jamshedji Byramjee Kanga, Kt.



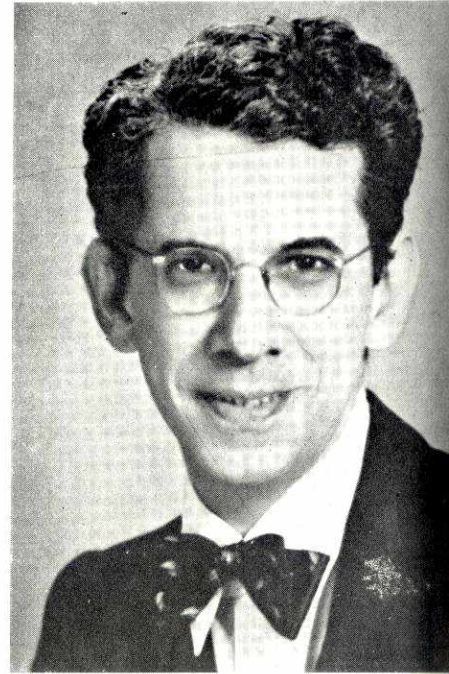
Mahamahopadhyaya Dr. P. V. Kane



Mr. G. N. Thakore



Sir Noshirwan Engineer, Kt.



Mr. H. M. Seervai,
Advocate-General

SOME PRACTISING ADVOCATES



Mr. M. R. Bobade



**Mr. R. B. Kotwal,
Government Pleader**

6

“RECOLLECTIONS” OF Mr. M. C. SETALVAD

“It is difficult for a man to write long about himself without vanity. I shall therefore endeavour to be short”.

—Hume.

THINKING of the old and massive grey block of buildings which I think I first entered about 1906 or 1907 vague and confused memories of my experiences there crowd in upon me.

I do not know whether this imposing structure erected soon after the middle of the nineteenth century has undergone any substantial changes since its construction. It certainly has been deprived of much of its grandeur and its architectural beauties by the tall buildings which have grown up close to it on the east and the north. The ugliest and the most unwelcome encroachment on its one time pleasing surroundings has been the structure now used for the City Civil Court, which has deprived the High Court of even the small open space it had on the eastern side. That we were told was the idea of Sir John Beaumont who prided himself on having been able to induce Government to put up the City Civil Court in the compound of the High Court. The close proximity of the City Civil Court has no doubt meant considerable facilities to the lawyers in the High Court who also work in the City Civil

Court. It may be that the working of that court under the wings, as it were, of the High Court has helped to inspire and maintain a healthier atmosphere and better standards in the City Civil Court. But there can be no doubt that the erection of the City Civil Court building where it now stands has created what may almost be described as a respectable slum area next door to the highest court of justice in the State.

This fact is borne in upon one with great force when one has occasion to visit the magnificent piles of buildings—airy, roomy, well lighted and situated in the midst of spacious and beautiful grounds—of other High Courts like those of Madras, Allahabad and Patna. The sister building of the Calcutta High Court however gives the consolatory reassurance that the High Court of Bombay is not the only one which suffers from limitations and discomforts of a cramped and outdated building unsuited to modern needs.

Those in charge of the Jubilee Celebrations asked me to write my “Reminiscences”. I think one is supposed to write them when one has reached the biblical age of three score and ten ; and he is supposed to record events and impressions which may be of interest or use to the coming generations. That no doubt is the conventional reason which the writer and his friends wish to believe to be the true motive for making the record. The inordinate vanity of man is in most cases the source of the writing and its publication. Few are above the temptation of believing themselves to be unique and a desire to project themselves into the future.

I have preferred the title “Recollections”.

In the guise of an attempt to narrate interesting events of the past, too often is told a story not of men and events but generally of the writer himself. Depicting oneself in trying to portray others may with the best of intentions and efforts be difficult to avoid.

Yet I have to caution myself and remember that I have to speak not of myself but of the men and the scenes which I witnessed.

In dealing with the topic of this character one must feel greatly handicapped unless he has a prodigious memory or he is one of those very methodical persons who write diaries, keep old papers and have the habit of making notes. Powerful memories can undoubtedly mirror vividly scenes of long ago and sometimes reproduce almost to a word conversations dating back many years. These prodigies naturally excite our wonder. Occasionally one feels inclined to doubt whether they are relating what they really remember. Imagination may well play pranks with what we believe we remember, and we may be led to talk of things very different to those which we really saw and heard. Not blessed with a very retentive memory and being without a diary or record of any kind, I am yet attempting to set down what I think I remember, hoping that the indulgent reader would pardon me for the inaccuracies which I am sure will be found in what I will say hereafter. When I say this I have in mind more particularly my seniors at the Bar and my contemporaries with better memories than mine.

My acquaintance with the High Court began somewhere in 1907 or 1908. That acquaintance was in my capacity as a student reading for the Advocates Examination, which in those days gave admission to the Original Side of the High Court ; the only door through which persons other than the privileged members of the English Bar could enter the Original Side. That was the door through which Telang, and later Jamsheedji Kanga and Bhulabhai Desai had entered the then closed preserve of the English Bar, that land of promise, the Original Side. The pupil reading for the Advocates Examination had in those days, after taking his law degree, to attend the High Court and follow

proceedings in it for two years keeping a diary which had to be signed by the Registrar of the Court from day to day.

Sir Lawrence Jenkins who had been appointed Chief Justice of Bombay in 1899, had, I think, retired in 1908. Perhaps I had a glimpse of him when attending the court as a candidate-advocate. But I am not sure. I do, however, clearly remember having seen him not in the High Court but at a private function held at the residence of Jamietram Nanabhai, a son of Nanabhai Haridas, the first permanent Indian Judge of the Bombay High Court. Jamietram who was a friend of my father and family was an orthodox Hindu and was proud of India and things Indian. An athlete and acrobat from Saurashtra had come to Bombay who among other things could perform the feat of shooting blind-folded from a distance of several yards a small earthen pot deposited at a distance. With a view to give the performer an opportunity of exhibiting his skill to members of the Bench and the Bar, Jamietram invited the Judges and some Advocates to his spacious residence at Malabar Hill where the man gave a demonstration. It was at this gathering that I had a glimpse of the distinguished Chief Justice with his intellectual features and somewhat portly figure.

As a student and later many a time did I hear of the manner in which Sir Lawrence Jenkins had helped to give a tone to the High Court and the Bar in Bombay. Justice Batchelor, an able civilian judge had been brought to the High Court by Sir Lawrence over the heads of several senior civilians. He had been District Judge in Ahmedabad for a long time and knew and could speak Gujarati well. Jenkins and Batchelor frequently sat together as a Bench on the Appellate Side. In those days it was the practice particularly on the Appellate Side where questions of Hindu law frequently arose to start citing authorities from the earliest dates

and trace the history of the law. It was usual also in important cases to hear two Advocates on either side as was the practice in the Privy Council and still is in some of the English Courts. While encouraging a detailed argument with exhaustive citations in important matters the Chief Justice, it is said, discouraged long, academic arguments asking Counsel to draw the attention of the Court only to two or three relevant and important cases which supported his point of view. Not infrequently the Chief Justice in the course of the argument would draw upon his own extensive knowledge of law and legal principles and refer to important English and Indian cases, asking Counsel whether the point he was dealing with had not been decided in a particular case. However members of the Bar, always happy to have the chance of making a thrust at the Bench, thought that these references in the course of arguments to leading English and Indian decisions were the result of research made by the Chief Justice overnight though they bore the appearance of *improptu* recollections.

Jenkins was undoubtedly the maker of the Indian Bar on the Original Side in Bombay. When he took office, practice on the Original Side was a monopoly of the English Barrister. Some of them were giants at the Bar. One recalls the names of Inverarity, Lowndes, Lang, Macpherson, Branson and others. The newly appointed Chief Justice took particular care to encourage Indian talent and it was said persuaded talented Indian members of the Bar to take to practice on the Original Side. The result was a slow but continuous process of the Indianisation of the Original Side Bar. Before Jenkins retired in 1908 I think that several Indian Members of the Bar were firmly in the saddle on the Original Side including persons of the eminence of Dinshaw Davar and Chimanlal Setalvad. Davar had, I believe, already been appointed a judge in 1906.

On the retirement of Jenkins, Basil Scott then Advocate-General was appointed in place so that in 1911 when I joined the Bombay Bar we had Scott as Chief Justice.

We did not have in those days large Benches of the High Court numbering twenty or more as we have now. The strength of the Bench in Bombay was just seven, and if my recollection is correct we had two Indian Judges, Dinshaw Davar and Narayan Chandavarkar. We had three distinguished civilian judges on the Bench in Batchelor, Beaman and Heaton. It will be recalled that in those days the proportion of the I.C.S. judges on the Bench could not exceed a third of its total strength.

What a fuss the Bar made in those days and later on the question of the appointment of civilian judges to the High Court ! Looking back over the years one wonders whether the froth and foam expended over this question by the Bar and other bodies was really justified. It is true that the civilian element in those days consisted largely of Britishers, and it was not unnatural that the Bar should agitate for a larger Indian element on the High Court Bench ; and this could result only by a larger field of selection being left open to the Bar. However that may be if one considers by and large the work of the civilian judges who have served the High Courts one cannot but feel proud of their record. Restricting ourselves to the last fifty years, Batchelor and Beaman, Fawcett and Crump, Pratt and Broomfield, and Weston and Rajadhyaksha have indubitably contributed in no small measure to the great prestige of the High Court of Bombay. Indeed not infrequently the civilian Judge proved a more satisfactory judge from the standpoint of the Bar ; and, on the whole, he perhaps meted out justice in as fair as or even fairer manner than the judge recruited from the Bar. For one thing he did not have the loquacity of the Lawyer judge. He did not, like

the advocate judge, attempt to convince Counsel appearing before him of the incorrectness or unsoundness of his argument. I remember Chief Justice Beaumont, C.J., who frequently sat with Justice Kania, saying to him in a very audible aside during a long argument carried on by Justice Kania with counsel appearing before him: "Why try and convince the counsel; he is not here to be convinced". No doubt some of the civilian judges were at the other extreme illustrating the maxim that justice is not only blind but demonstrating that justice is dumb. What was passing in the judge's mind as the argument proceeded could be anybody's guess, so that counsel trying to put his submissions across had to grope completely in the dark.

The Bar has always believed and still believes that the judge trained at the Bar can have no comparable rival. This attitude of self-satisfaction bordering on supercilious contempt of the service judge stems no doubt from the practice in Britain where the Bench is recruited solely from the Bar. I remember Chief Justices Marten and Beaumont speaking in a patronising tone of their civilian colleagues on the Bench. Yet many continental countries have carried on with evident success wholly with a system of professional judges. Many distinguished names of professional judges figure on our judges' roll of honour—men who studied our indigenous systems of law and helped greatly in their development. We had among them men of deep and extensive knowledge who contributed in no small measure to the growth of legal tone in our country.

I recall Fawcett's historic judgment when he sat in the Full Bench of seven judges which dealt with the question whether suits to enforce mortgages were suits for land under the Letters Patent. The Bench was divided in opinion, the majority headed by Chief Justice Marten taking the view that they were not,

following the view laid down in *Holkar v. Dadabhai*. The minority was headed by Fawcett who delivered a masterly judgment tracing the history of the law from the earliest days. Fawcett's treatment of the subject evoked the admiration of so punctilious a critic as Marten who, I believe, expressed surprise that so brilliant a judgment could have emanated from a civilian judge!

The age-old controversy as to the merits of the judge from the Bar and the civilian judge has, however, ended long ago. It has ended, it must be said, in a victory for the civilian judge. Many of these judges have distinguished themselves as Chief Justices of the High Courts and have filled with distinction the offices of judges of the Supreme Court.

Justice Beaman undoubtedly belonged to the group of the great judges which the civil service has given to Bombay. He suffered from a peculiar infirmity of the eye which seemed to restrict his vision only to a straight line and he had to be assisted in his movements by reason of this disability. Yet he was a great reader not only of law but also of literature most of which I think was read out to him by a secretary. B. G. Kher was, at one time, his reader. He had a remarkable memory and a very sharp sense of hearing both probably rendered more acute by his impaired vision. He would in the course of argument refer from memory to English and Indian decisions, on occasions reproducing passages from them. Not infrequently in the course of the argument he broke unfamiliar and unorthodox ground, questioning what counsel believed to be well-established principles. Several of his judgments indicate new lines of thought and express views widely divergent from those of distinguished British and Indian judges. Notwithstanding some of his heretical views he will undoubtedly be remembered as a very distinguished judge of the Bombay High Court.

I cannot resist the temptation of making a reference to Justice Russell, a Barrister judge. I cannot say whether he was still on the Bench when I came to the Bar in 1911, I recollect his going blissfully to sleep when presiding as a senior judge in a Division Bench. The disconcerting effect on the counsel addressing the Court, the knowing glances exchanged by members of the Bar and the confusion in court when the judge woke up are difficult to describe. This tradition so intensely human has not been entirely neglected since in the Bombay High Court. Indeed one can vouch for its having travelled to the highest court in the land! And if what books record is true the amiable sleeping judge is known in other lands too.

Counsel generally appears before and addresses a "sitting" judge. It may happen, as has been my experience, that the judge may be flanked on either side not by brother judges but by fierce looking dogs. But counsel addressing Russell had the unusual privilege of addressing a standing or a walking judge. In order to keep himself awake, the judge sometimes stood on the dais leaning on a high desk or paced up and down the dais. Counsel addressing him had to be alert keeping track of the Judge's eyes as he moved from one side to the other.

The stern sense of duty in a judge leads him to search for all methods and measures by which he can mete out true justice. These must needs be arduous and complicated. But an experienced judge may evolve simpler methods. If he has found one or more counsel to be generally able and weighty the judge could well make it a rule of practice to give judgment for the side represented by that counsel, adopting his argument. That would certainly make things very easy for him and more often than not his decision would be right. Such it was said was the golden rule of Russell. The cause espoused by Inverarity had the greatest chance

of acceptance and next in order came Lowndes. But what if these counsel were opposed to each other? Well, the Judge's rule had a provision for that contingency also. Between the two Inverarity prevailed.

I did not see Inverarity at the height of his career. By 1911 he had developed a hardness of hearing and age appeared to be telling on him. Yet his energy was remarkable. One still has a vivid recollection of his going from one court to another carrying his brief bag himself and his working on his pleadings while busy in court. Even in his later days he struck one as a remarkable advocate. An impressiveness of delivery or a flow of words or persuasive eloquence were not a part of his equipment. But his greatness as an advocate lay in the closeness of his reasoning. He appeared never to waste a word. No question not directed to a definite point in the case an answer to which would help his client would find a place in his cross-examination. It has been said of the great Charles Russell that he "was equally great as an advocate and as a judge" and that "his dominant characteristic was reason, penetrated and made redhot by passion". Judging from his arguments Inverarity derived no assistance from passion. His strength lay in the brilliance of his intellect which resulted in a powerful and reasoned presentation of his case.

He had always an encouraging smile for a junior. I remember appearing against him in a matter before Marten when I was quite a junior. As luck would have it, I managed to persuade the judge to decide in my favour on some question relating to a third party notice. The decision was clearly vulnerable. The matter went to the appeal court, Inverarity still appearing against me. The decision was reversed. I remember Inverarity telling me in a quiet tone "It never helps to persuade the judge to come to a wrong conclusion of law".

Strangman was the Advocate-General when I joined the Bar. He was, I believe, quite a junior when he was appointed to the office in 1908. He appeared to have gathered a large practice even by that time and he came into much greater vogue in later days. The Indian members of the Bar who commanded substantial work on the Original Side were, I think, Jinnah, Padshah, Bahadurji and Chimanlal Setalvad. Dinshaw Davar had been appointed to the Bench and Kanga and Bhulabhai were still juniors at the Bar, Kanga having been admitted to the Bar in 1903 and Bhulabhai in 1905.

On the Appellate Side we had in those days great advocates like Ganpat Sadashivrao Rao, Mahadev Bhaskar Chaubal and H. C. Coyajee. It was an education to listen to Rao tracing the history of some doctrine of Hindu Law from its start somewhere in the eighteenth or early nineteenth century and going over the decisions of various High Courts in which it had been developed. For both the Bench and the Bar those were days of leisurely work. The first World War with its aftermath of commercial litigation was yet far away. Jayakar with his knowledge of Sanskrit and study of Sanskrit texts had already acquired a reputation on the Appellate Side. A striking figure in the Appellate Side Bar was Lallubhai Shah who impressed one not so much by the force of his intellect or the fluency of his argument as the thoroughness of his preparation, his integrity, and the earnestness which he put into his arguments.

The striking figures on the Bench were Dinshaw Davar on the Original Side who shone by his practical common sense and experience of men and matters, and Chandavarkar on the Appellate Side with knowledge of the intricacies of Hindu Law and a close study of cases.

Norman Macleod who I believe had not known much practice at the Bar and who had held among others, the office of the

Official Assignee came to be appointed a judge and sat on the Original Side. In those days English Barristers, however junior and inexperienced, were supposed to be fit for all important assignments including judgeship. However, whatever his lack of experience, Macleod soon proved himself to be an excellent judge. He had an uncanny insight into facts and long before counsel could finish opening his case he would from a rapid perusal of the papers gather all the material facts. Once he was seized of them he would put questions to the advocate on the material points in the case. With a mind capable of such a quick grasp of facts, he was able to dispose of cases before him with great rapidity. Soon after the end of the first World War the Original Side list of the High Court was crowded with commercial causes, as many as 6,000 to 7,000 cases having been filed during the year. Macleod had long lists of these commercial causes placed before him each day, as many as 20 or 30, and it was not unusual for him to have finished 10 or 12 of them by the end of the day. By this time Kanga and Bhulabhai had attained considerable practice on the Original Side and these twin rising stars in the firmament of the Bombay Bar reaped a rich harvest appearing day after day against each other in these commercial causes before Macleod.

Nor was Macleod's quick grasp confined to facts. Though he did not appear to have a deep knowledge of law, so keen was his perception that once a question of law was argued before him he became fully seized of the underlying principle and did justice to it. I remember an important case dealing with the construction of the will of a wealthy Parsee in which very complicated questions of law including the law of perpetuity and vested remainders arose, and in which I had the privilege of making perhaps my first argument before Macleod. Notwithstanding the complexity of the matter the points were quickly perceived and fully appreciated.

The counsel appearing before him made no difference to Macleod. Even senior counsel like Inverarity received short shrift from him if the points put forward by them did not appeal to him. He had his own method of controlling counsel. He would try to put to them his point of view indicating the reason why counsel's submission could not be accepted. If counsel thereafter persisted the judge would pay little heed to what was being said and would gaze at the landscape out of the window holding his pen in his lips. That was a clear indication that it was not much use going on with the argument. This was fully understood by counsel who graphically remarked that the shutters of His Lordship's mind had been closed.

Macleod succeeded Scott as Chief Justice in 1919. His appetite for work continued to be as voracious on the Appellate Side as when he sat on the Original Side. I remember appearing before him in Original Side appeals on many occasions. If one had a number of appeals on his list one had to be ready with appeals as low down on the list as the tenth or the twelfth. It was not as if the Chief Justice read the papers beforehand. His habit was to look at the papers immediately the appeal started and a quick turn over of the pages of the paperbook would put him in possession of what he believed to be the central facts in a few minutes. Then would follow his questions. If you managed to survive that questionnaire for ten or fifteen minutes you could be sure of an opportunity of putting your argument more fully before the Court. Though so quick and so insistent on his first impressions he still had an open mind and if you had a good point you found no difficulty in convincing him. His appetite for work was enormous and he would in order to clear the file work even after court hours. So accustomed was

he to write out his own orders and judgments that long after the advent of the stenographer he continued to write his judgments himself, some of them long ones.

Chief Justice Marten who succeeded him was a complete contrast. He believed in a thorough—sometimes a too thorough—investigation of the matter before him so that causes and appeals before him took inordinately long. Nor was the task of the counsel appearing before him a smooth one. One had to be careful taking note of many of His Lordship's susceptibilities and had to be prepared for occasional outbursts of temper. But these did not in the least affect the course of justice which though long and sometimes tortuous ran to its proper end with a judgment which did full justice to all the points argued and which examined all the relevant aspects of the law with remarkable learning and lucidity.

The retirement of Marten in 1930 brought on the scene Sir John Beaumont as Chief Justice. The High Court under him settled down to a long period during which there was quick disposal of matters and the handling of all questions in a practical fashion greatly in contrast to what had been experienced in the days of Marten. The High Court had in him a shrewd and practical administrator. Having acted as a colleague for a short time of Justice Varadachariar in the Federal Court the Chief Justice described him as having a mind as sharp as a razor's edge. That description could also aptly be applied to Beaumont himself. He had a keen intellect capable of analysing difficult legal problems or disentangling the most complicated facts. An argument put before him was appreciated immediately and there followed a discussion in the course of which the court exhibited a thorough grasp of fundamental principles. His mind was never so quick as in perceiving the true construction of

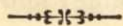
statutes or the correct ratio of a decision. A remarkable quality which the Chief Justice possessed was his power of dictating a judgment immediately after the argument was closed which dealt adequately and yet very concisely with the facts and law of the case without the use perhaps of a single word more than those needed to explain them. He retired in 1943.

That brings us close to the present, and to personalities many of whom are happily still with us. Nor have I any noteworthy recollections of the years after 1942 during which my work called me away to other High Courts all over the country, till I settled down at the Federal and the Supreme Courts after Independence and the Constitution.

Whether one thinks of personalities on the Bench or at the Bar or the volumes that enshrine the decisions of its judges I feel that during the century of its existence the High Court at Bombay has built up a great tradition in the administration of justice. On the rolls of its judges and advocates there are names which bring to our mind eminent judges and advocates not only in other parts of India but elsewhere in the world of Anglo-Saxon jurisprudence. This tradition has been maintained unimpaired and untarnished till recently. The judge from Bombay has many a time shed lustre on the Bench of the Supreme Court of India. On many an occasion members of the Bar of the Supreme Court have listened with admiration to counsel from Bombay who now and again come to argue appeals in the Supreme Court. Indeed the High Court which could train and produce such able and efficient advocates has been spoken of with great respect. Will the High Court continue to maintain the stature which it has attained during its century old existence ?

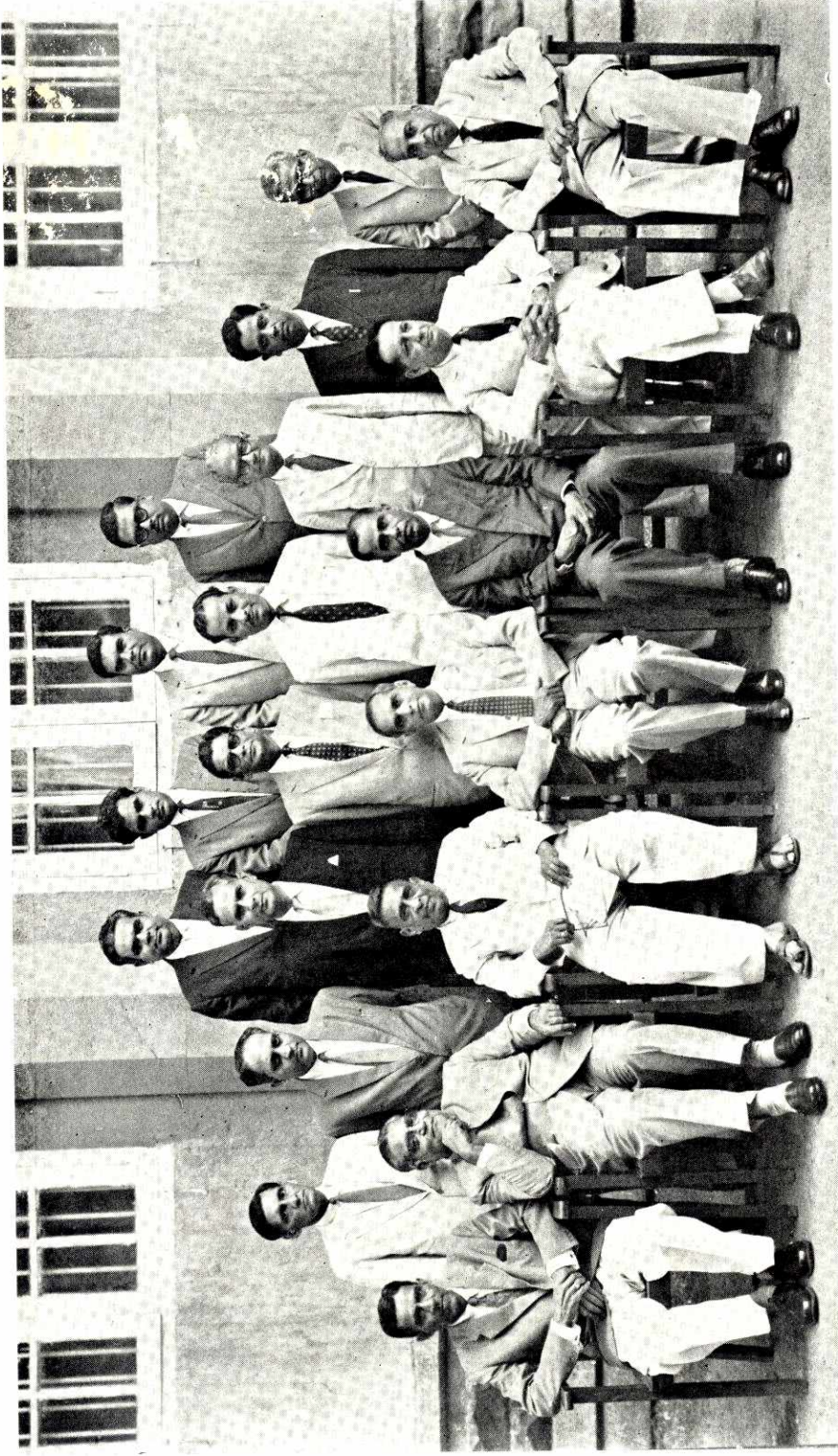
The politician, oblivious of the importance of the administration of justice, the maintenance of an impartial and efficient

judiciary and an able and independent Bar functioning with integrity, has been busy mutilating and dividing courts, splitting up their jurisdictions and decrying the importance and the need of a strong Bar. Perhaps we have yet to face more difficult times. Notwithstanding however all these discouraging trends the future lies largely in the hands of the judiciary and the Bar themselves. In spite of the changed conditions and circumstances a realisation on the part of every member of the profession of the law of the importance of maintaining these traditions and standards, and of organising and working to that end must needs result not only in the High Court of Bombay maintaining its standards of achievement in the past but raising them to still greater heights.



Members of the Bar

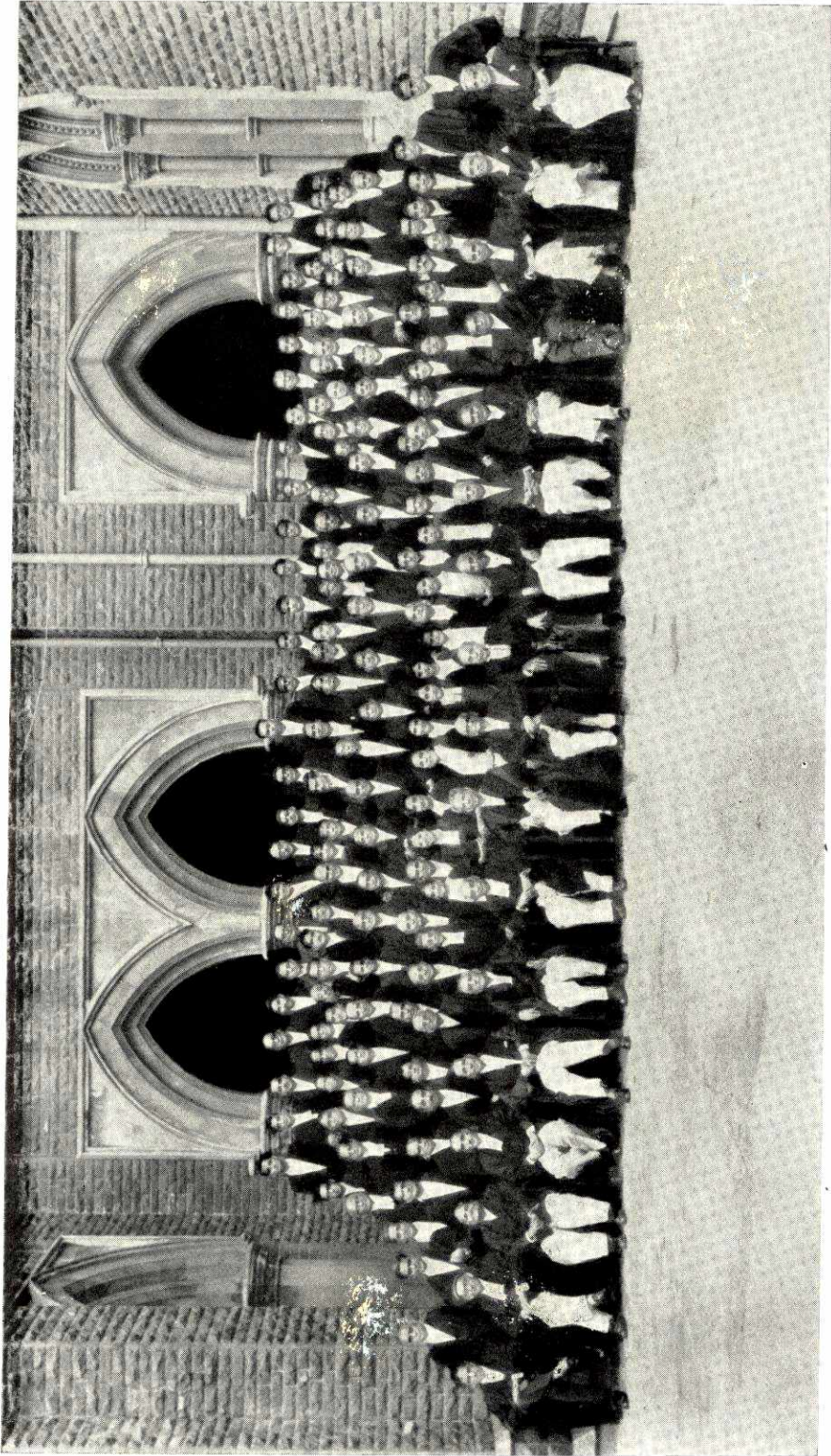
THE BAR COUNCIL OF MAHARASHTRA



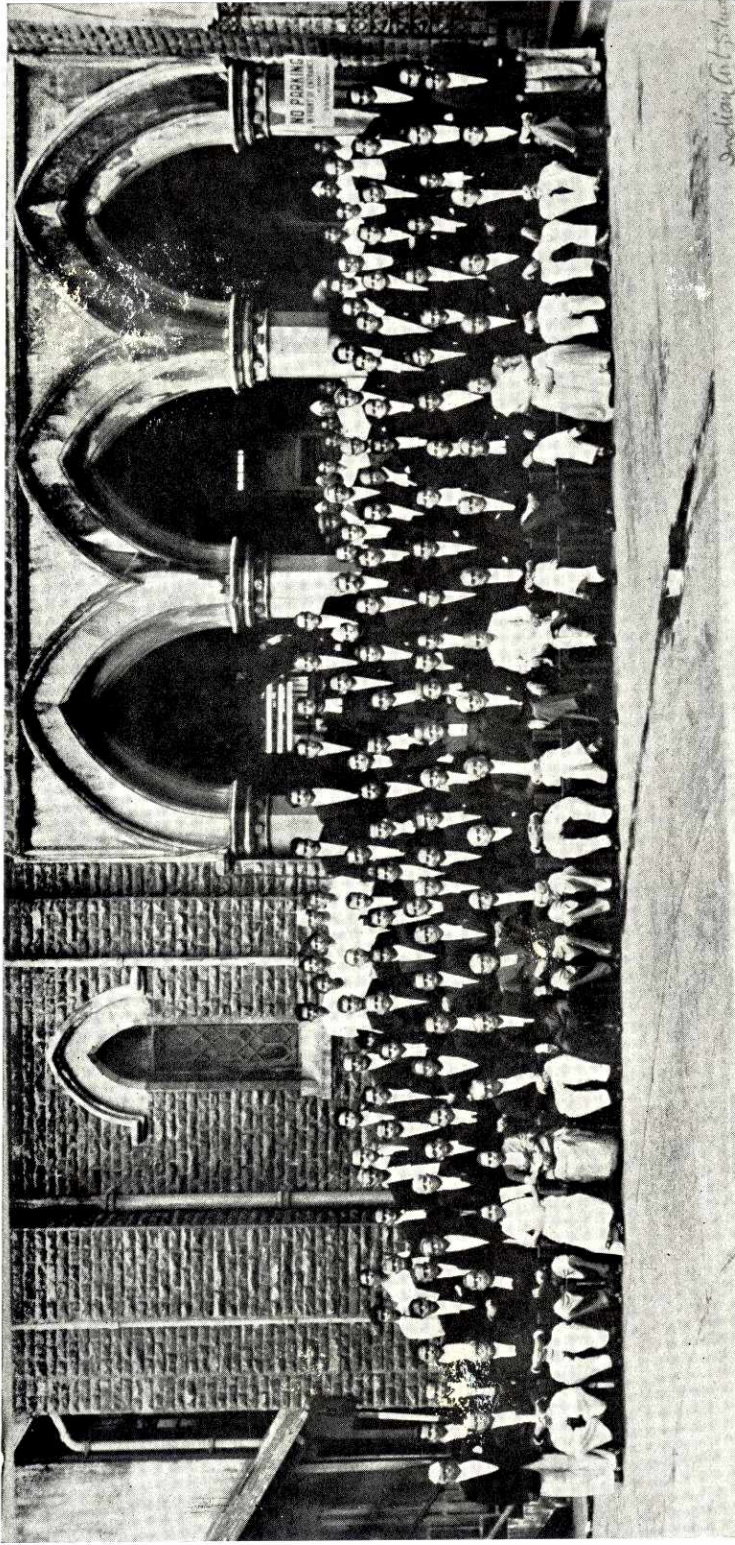
*Sitting (Left to Right) : Mr. S. V. Desai, Mr. R. B. Kantawala, Mr. S. K. Patwardhan, Mr. S. V. Gupte (Chairman),
Mr. J. L. Nain (Vice-Chairman), Mr. R. A. Gagrath, Mr. N. H. Holekar,*

*Standing 1st row (Left to Right) : Mr. J. H. Dalal, Mr. M. V. Paranjape, Mr. G. R. Ganatra, Mr. M. V. Parekh,
Mr. M. N. Chandurkar, Mr. M. G. Desai, Mr. H. S. Mandrekar, Mr. S. N. Kherdekar,*

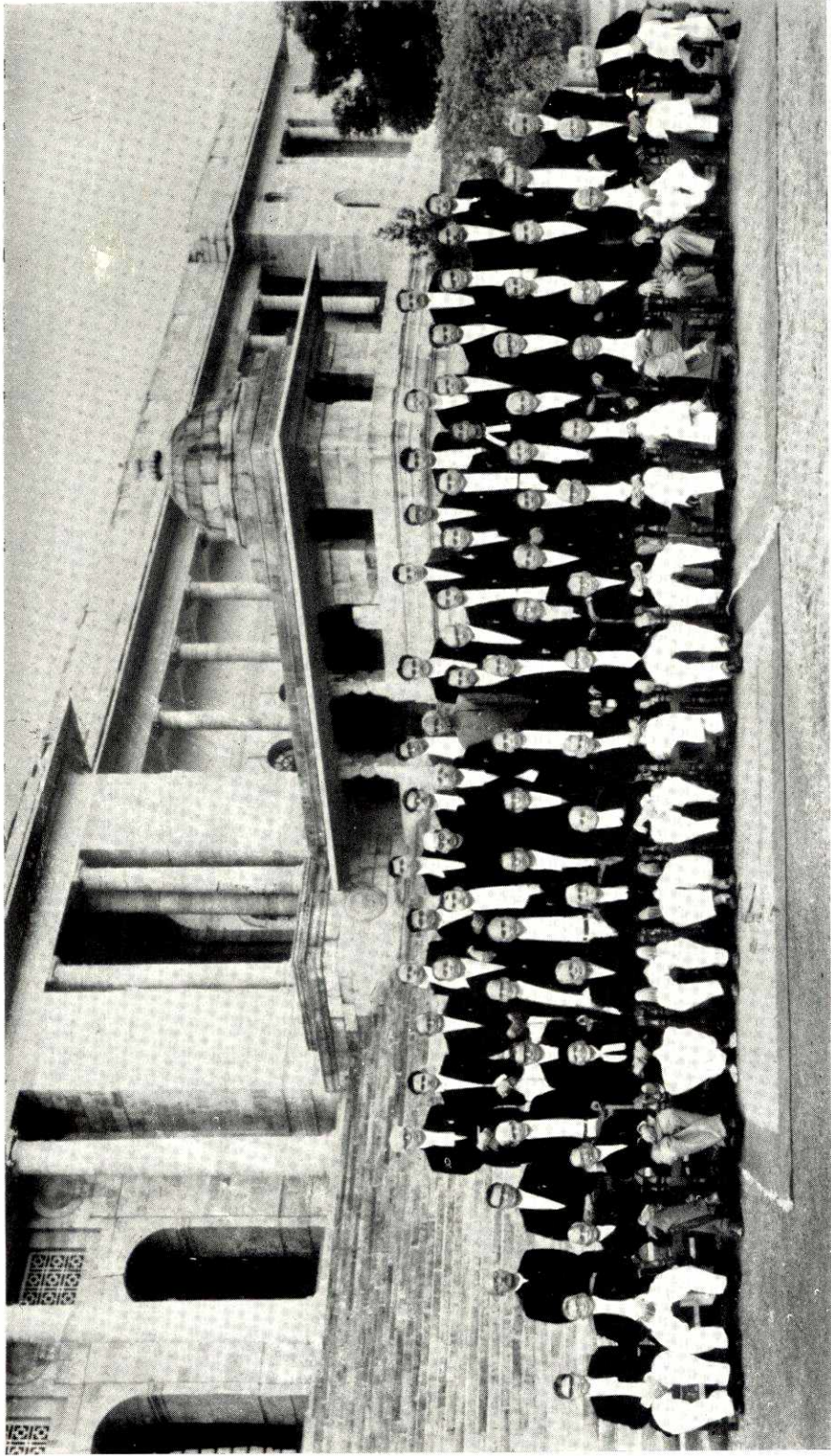
Standing 2nd row (Left to Right) : Mr. N. H. Gursahani, Mr. K. K. Singhi, Mr. D. Y. Lovekar, Mr. S. B. Bhasme.



Members of the Bombay Bar Association



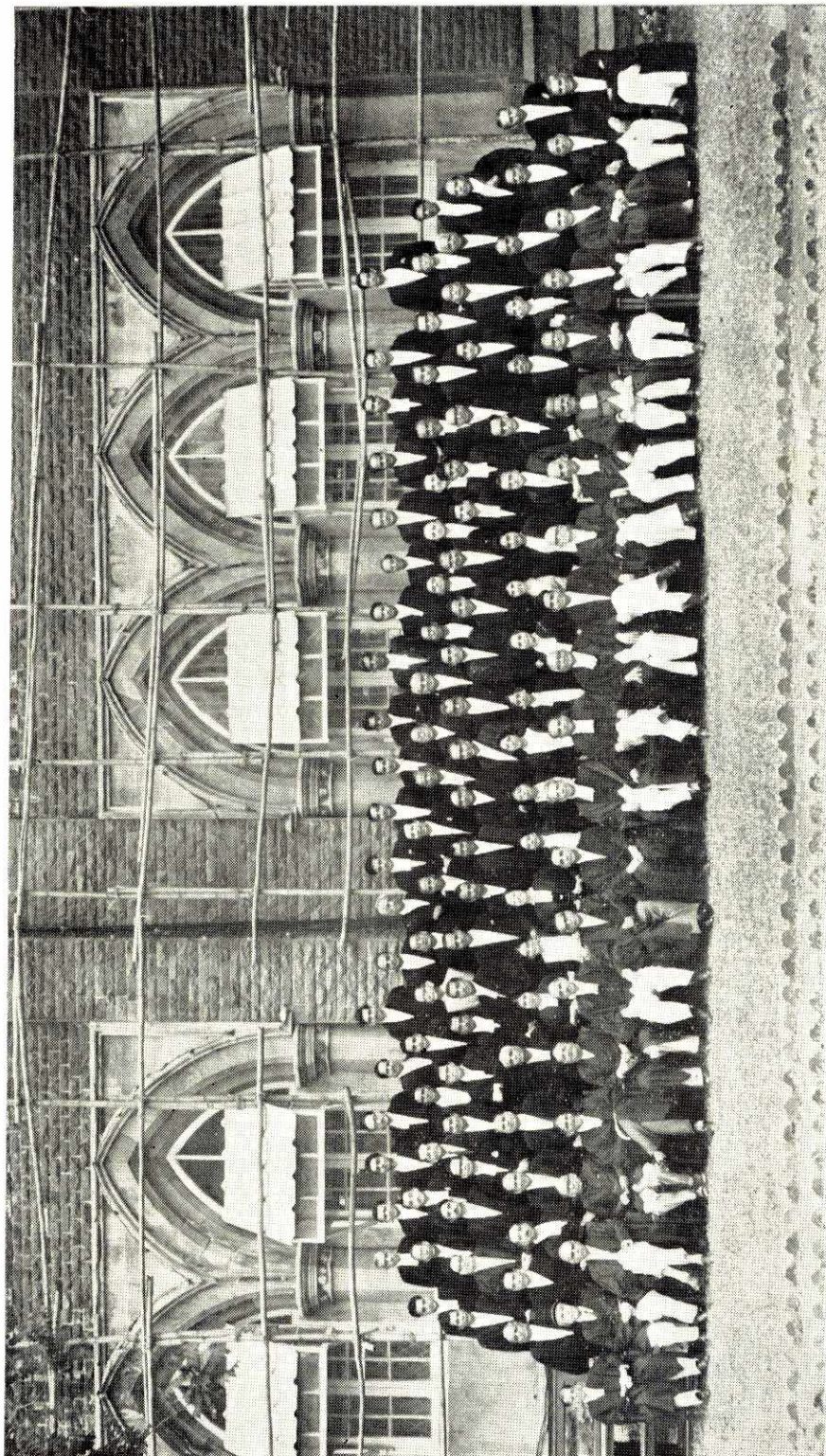
Members of the Advocates' Association of Western India, Bombay



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REMINISCENCES OF SIR JAMSHEDJI BYRAMJEE
KANGA

IN Great Britain the legal profession is held in high esteem. The Lord Chancellor is keeper of the King's conscience. Great Britain has applied to the legal profession the epithet of learned. In the United Kingdom the high traditions of the Bench and the legal profession are maintained and preserved. A lawyer in the United Kingdom to whichever political party he belongs is a conservative for the preservation of the said traditions. When the Supreme Courts and the Courts of *Sudder Diwani Adaulut* were established in India the Judges of the Supreme Courts were British barristers and the judges of the Courts of *Sudder Diwani Adaulat* were members of the covenanted civil service who were all British. British barristers and attorneys-at-law were practising in India. In 1861 Sir Mathew Sausse, Chief Justice of the Supreme Court in Bombay, and Sir Joseph Arnould, a puisne judge of that Court, tried the celebrated Maharaja Libel case. British barristers appeared as advocates in that case. On 6th August 1861 the British Parliament passed 24 and 25 Victoria Ch. 104—an Act for establishing the High Court of Judicature in Bengal, Madras and Bombay presidencies. By the said Act it was *inter alia* provided that persons who at the time of the establishment of such High Court in any of the said presidencies were judges of the Supreme Court and judges of the Court of *Sudder Diwani Adaulut* of the same presidency should be

and become judges of such High Court without further appointment for that purpose and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and upon the establishment of such High Court, the Supreme Court and the Court of Sudder Diwani Adaulut should be abolished. It was further provided by the said Act that not less than one-third of the judges of the High Court including the Chief Justice should be barristers and not less than one-third should be members of the covenanted civil service. Thus only a barrister could become Chief Justice of a High Court.

In 1862 when the Bombay High Court was established Sir Mathew Sausse who was then Chief Justice of the Supreme Court in Bombay became Chief Justice of the Bombay High Court and the judges of the Supreme Court and the Court of Sudder Diwani Adaulut in Bombay who were all British became judges of the Bombay High Court. The High Court was empowered to admit and enrol Advocates, Vakils and Attorneys-at-law and to make rules for their admission. On the establishment of the Bombay High Court barristers who were then all British were admitted and enrolled as advocates of the High Court. Solicitors who were also then British were admitted and enrolled as Attorneys-at-law of the High Court and Vakils who were all Indians were admitted and enrolled as Vakils of the High Court. The Chief Justice had the power to make a pleader an advocate of the High Court. The Chief Justice and the judges of the High Court had the power to admit any person an advocate, attorney or pleader. The British judges and lawyers brought into India the high traditions of the Bench and the legal professions and maintained them in India. These traditions became the traditions of the Indian Courts and of the legal profession in India. The British Code of conduct of the legal profession was followed in

India. The epithet of learned was applied to the legal profession in India and the legal profession became a very honourable profession. In the table of precedence the Chief Justice of the High Court was placed next to H. E. the Governor and the judges of the High Court were given a very high place. The Advocate General was given the powers of the Attorney General in England. It was strongly urged by the judges of the High Courts that a lawyer in India should live up to the said traditions.

Sir Mathew Sausse, the first Chief Justice of the Bombay High Court, was known as "Sausse the Silent", He never read newspapers, did not go to any club and did not attend social functions. He was of the opinion that a judge in the discharge of his duty should not be influenced by what appeared in the newspapers or what he heard by talking with people.

Sir Richard Couch was a puisne judge of the Supreme Court and became a puisne judge of the Bombay High Court and became Chief Justice of the Bombay High Court in 1866. He was appointed Chief Justice of the Calcutta High Court in 1870. At that time Calcutta was the capital of India and the salary of the Chief Justice of Calcutta was higher than those of the Chief Justices of the other High Courts in India. He stood first amongst the Chief Justices of India. Sir Richard Couch when he retired as Chief Justice of Calcutta became a member of the Judicial Committee of the Privy Council.

*Sir Michael Westropp practised as a barrister in Bombay. He became a puisne judge of the Bombay High Court and succeeded Sir Richard Couch as Chief Justice. Law was then in an unsettled state. In lengthy judgments he discussed and settled many points of law. He developed Hindu Law. His classical judgment in *Novroji v. Rogers* (4 Bombay High Court Reports p. 1) settled for all times the law by which Parsees are governed. His judgments*

read like a law book. He generally took time to deliver his judgments. Sometimes he did not deliver his judgment for even a year if he heard that a law book was to be published or a decision was to be given in England on a point he had to decide. In an appeal to which Government was a party and the judgment was not delivered for a long time the Government Pleader applied that judgment had been long delayed and should be delivered soon. Westropp C. J. said that such an application should not have been made. Government was like any other litigant and must wait like other litigants. Once he went to see the prison in Bombay. He there saw a man who was sent to prison for contempt of Court. He heard that the man had been locked up for two years. He ordered that the said person should be brought to his Court the next day. When the prisoner appeared in his Court he reprimanded the prisoner in severe terms and ordered the prisoner's immediate release. (Now by Act 32 of 1952 minimum punishment for contempt of Court is six months simple imprisonment or Rs. 2000 fine or both). Some months before he retired he had a severe attack of gout. After he retired he lived in Monte Carlo in France.

Sir Charles Sargent was a judge in Malta. From there he came to Bombay as a puisne judge and became Chief Justice in 1882. He always wore a top hat and was dressed like judges in England. He was seen in a broughman, a fashionable conveyance in those days in England and India. His judgments are short. His judgment in *Holkar v. Dadabhai*, 14 Bom. p. 353 (a case about the jurisdiction of the High Court as regards a suit by a mortgagee where the property mortgaged is outside the City of Bombay) has not been followed by other High Courts and was reversed by the unanimous judgment of a Full Bench of three judges but was restored by a Full Bench of seven

judges (Fawcett and Mirza JJ. wrote dissenting judgments). Once Sargent C. J. wanted to consult Mr. Inverarity in a personal matter. Mr. Inverarity told him that the conference would be held in his Lordship's chamber or at his Lordship's residence. Sargent C. J. told Mr. Inverarity that he was consulting Mr. Inverarity not as Chief Justice but as a client and the conference must be held in Mr. Inverarity's chamber in the High Court and the conference was held in Mr. Inverarity's chamber. Sargent C. J. thought that the Indian Solicitor's knowledge of the English language was not good. At that time one who had passed the Matriculation Examination could sit for the Attorneys' Examination. He revised the rule as regards the Attorneys' Examination. According to the revised rule only a person who was a Bachelor of Art or a Bachelor of Science could sit for the Attorneys' Examination. The Appellate Side Bar was a good Bar in his time and he liked that Bar. During vacations he used to go to the hill stations in India. The May vacation was then of six weeks and the October vacation was of five weeks. He had quarrelled with the Government and stopped going to Government house. One of the disputes was about the place of the Chief Justice and judges at the Governor's levee. He was a popular judge and his portrait is in the Sessions Court and also in the Appeal Court. His portrait was also seen in two places outside the High Court.

Sir Charles Farran was a member of the Original Side Bar. He was a very good lawyer. He became a puisne judge and succeeded Sir Charles Sargent as Chief Justice in 1895. Bayley J. was a senior barrister judge. When Bayley J. heard of the appointment of Sir Charles Farran as Chief Justice he resigned by a telegram and went to England by the next available boat. Sir Charles Farran made Mr. Rustamba Patel, Chief Judge of the Small Cause Court, and Mr. Chimanlal Setalvad (afterwards

Sir Chimanlal) advocates O. S. He was a very popular judge. He worked as Chief Justice for about three years. He went on leave to England where he died. His portrait is in the Court near the High Court library known as Mr. Justice Tyabji's Court and later as Mr. Justice Davar's Court. In 1912 one day at about 10-15 a.m. his daughter came to see her father's portrait. She went on the Bench of the Court where the portrait was and looked at the portrait for some time and was very pleased.

Sir Louis Kershaw who came from Allahabad worked as Chief Justice for a few months and died. Sir Chimanlal Setalvad told me that he was a very good judge.

Sir Lawrence Jenkins, the 7th Chief Justice, was a Chancery lawyer and was practising in England. He was appointed a puisne judge of the Calcutta High Court. When he travelled by boat to take charge of his office in Calcutta he read on board the ship books on Hindu Law. He was very popular in Calcutta and was considered a very good judge. In 1899 he was appointed Chief Justice of the Bombay High Court. Calcutta lawyers then said and it was published in newspapers that Calcutta's loss was Bombay's gain. In 1904 Mr. Sinha an advocate of the Calcutta High Court (afterwards Lord Sinha) came to see the Bombay High Court. He met me and some lawyers in the High Court library and told us that Sir Lawrence was their best judge and the Calcutta lawyers were unable to find who was responsible for taking him away from Calcutta. If an advocate or a pleader was well prepared Sir Lawrence would help him but if he was unprepared he became very angry. In order to control his temper he almost became a vegetarian. In order that he might be able to read Sanskrit books on Hindu Law he wanted to learn Sanskrit. He asked Mr. Setlur an Advocate O. S. who was a Sanskrit scholar and had very good knowledge of Hindu Law to teach

him Sanskrit. He tried to learn but he said he could not go beyond the Sanskrit alphabets. Mr. Scott who was then Advocate General told me that High Court rules in force at that time were not satisfactory. Sir Lawrence revised them and the revised rules were very good. Sir Lawrence decided an appeal in favour of a client of Mr. F. E. Dinsha, a distinguished Solicitor and a partner in M/s. Payne & Co., Solicitors. An appeal was filed against that decision to His Majesty in Council. Mr. F. E. Dinsha went to London to instruct his Counsel Mr. J. A. Hamilton, afterwards Lord Sumner. When Mr. F. E. Dinsha came back to Bombay he told me that his Counsel Mr. Hamilton told him : “ Your best asset is the judgment of your Chief Justice. He was known here at the Bar as the encyclopædia of law ”. Sir Lawrence Jenkins used to say that vacations were necessary for the judges were tired at the end of a term. During vacations judges and lawyers should read law books and law reports. Sir Lawrence was the maker of the Original Side Indian Bar. He told British barristers that after they retired there would be an Indian Original Side Bar and every effort should be made to make that Bar a good Bar. He initiated the Moot Society which is often called Moot Court. Junior members of the Original Side Bar and the Appellate Side Bar mostly Indians became members of that Society. Mr. Saher a Parsi barrister was appointed secretary of that Society. The Moot Court sat once every week at 5 p.m. usually on Friday in the High Court Judges’ Library. Sir Lawrence was generally the presiding judge. Sometimes other judges, Mr. Scott, the Advocate General and Mr. Inverarity became presiding judges. The presiding judge gave a case. The secretary circulated that case amongst the members. Two members of the Society appeared as advocates for the plaintiff and two members as advocates for the defendant. Sir Lawrence after delivering judgment used to point out the

merits and defects of each advocate who argued the case. When an advocate or a pleader spoke very fast he said that advocate and pleader must remember that judges had not only to listen to them but to think about what they were saying. He once said that it was proper to write Jessel M. R., Sargent C. J. and West J., but when an advocate or a pleader read these names in Court or referred to them he must say Jessel Master of the Rolls, Chief Justice Sargent, Mr. Justice West. When an English barrister heard in the library what Sir Lawrence had said he told us that in a Court in England a barrister was citing Queens Bench Division cases and was saying 5 Q.B.D., 7 Q.B.D., 10 Q.B.D., and the learned Judge said "Every time you say Q.B.D. I have a mind to say U.B.D.". Sir Lawrence told lawyers in Bombay that some Calcutta lawyers were writing law books and that this practice should be followed in Bombay. At that time professors of Government Law School were appointed by a committee of which the Chief Justice was the president. Always a barrister or an advocate O. S. or a pleader was appointed professor of Government Law School. A Solicitor was never appointed professor of that school. Mr. D. F. Mulla, a Solicitor, afterwards the Right Hon. Sir Dinsha Mulla, had written an excellent commentary on the Civil Procedure Code and Sir Lawrence appointed him a professor of the Government Law School. He was a very good professor and became a principal of that School. Sir Lawrence also made Mr. H. C. Coyajee and Mr. D. F. Mulla advocates O. S. Sir Lawrence was appointed by Government to revise the Civil Procedure Code which he did. He was the only Chief Justice who delivered a lecture on a literary subject. In the Wilson College he delivered a lecture on Waverly novels of Sir Walter Scott. He was a very popular Chief Justice. In his time there was no club in Bombay of which Europeans as well as Indians could become members. Europeans

only could become members of the Byculla and Yatch Clubs and if an Indian wanted to see a member of those clubs the Indian could see him only in the compound of the club or if it was a residential club and he was residing there in his bed-room. If a judge resided in the Byculla Club which was a residential club and an urgent application was to be made to him in which an Indian appeared the judge could hear the application in his bed-room or in the compound of the club. Mr. Inverarity resided in the Byculla Club and sometimes he held conferences in his bed-room. Sir Lawrence was the founder of the Orient Club at Chowpatty of which Europeans and Indians became members. H. E. Governor used to visit that club once every year. Sir Lawrence was the president of the club. The practice of the club was to appoint the Chief Justice of the Bombay High Court its president and up to the time Sir John Beaumont was Chief Justice the presidents of the club were Chief Justices of the Bombay High Court. Sir Lawrence retired before he was sixty. He wanted to practise as a barrister in England. A week before he retired he was injured in a motor car accident and was unable to go to Court. On the last day before he retired members of the Original Side Bar and the Appellate Side Bar mostly Indians went to his house. There Diwan Bahadur Rao made a speech and Sir Lawrence replied. After he retired Government of India appointed him Solicitor to the Government of India in London. When Lord Morley was Secretary of State for India there were riots in Calcutta. Lord Morley had heard that Sir Lawrence Jenkins was popular in Calcutta and the Indians there liked him. Lord Morley writes in his Memories that he offered to Sir Lawrence Jenkins the Chief Justiceship of the Calcutta High Court and though Sir Lawrence had made up his mind not to go to India again, Sir Lawrence obeyed like a soldier and accepted the Chief Justiceship of the Calcutta High Court.

After he retired as Chief Justice of Calcutta he became a Privy Councillor. When he died, Mr. Malabari who was then Prothonotary and afterwards Official Assignee suggested that subscriptions should be collected for a statue of Sir Lawrence Jenkins in the compound of the High Court. He paid Rs. 5,000 for that purpose. Lawyers in Bombay also subscribed for a statue of Sir Lawrence Jenkins. Permission of Sir Amberson Marten who was then Chief Justice had to be taken for erection of the statue in the compound of the High Court. He readily gave his permission and said that permission of the local Government and the Bombay Municipality should also be taken. The Bombay Government and the Municipality readily gave their permission and the statue was unveiled by Sir John Beaumont.

Sir Basil Scott was a member of the Original Side Bar. He was a very good lawyer. He, like Sir Lawrence Jenkins, used to carefully read Hindu Law books. He was appointed Advocate-General. He was a fair opponent and the members of the Bar liked him. He succeeded Sir Lawrence Jenkins as Chief Justice in 1908. The Original Side Bar resolved to give him a dinner. Sir Basil Scott did not accept the dinner. He said that a dinner should be given to a judge when he retired and not when he was appointed. He also said that according to Government rules a Government servant could only take pan supari (betal leaves and betal nut). In 1912 he celebrated the Golden Jubilee of the Bombay High Court. He gave a tea party in the Sessions Court to judges and lawyers. He also gave a dinner. Chandavarkar J. wrote an article in the Times of India about the High Court's Golden Jubilee. Sir Basil Scott had a very high sense of duty and a keen and eager desire to do justice. Succeeding eminent Chief Justices he maintained the highest traditions of that exalted office. Sir Basil Scott filed a petition

for the opinion of their Lordships of the Privy Council as to whether the post of the Appellate Side Registrar was reserved for members of the Indian Civil Service. The opinion of the Privy Council was that it was reserved for the members of the Indian Civil Service. Beaumont C. J. told me that he liked the judgments of Sir Basil Scott. They were short and very well written. Mr. Nicholson a partner in Messrs. Little, Smith, Frear & Nicholson (now Little & Co.), Solicitors, was for many years a Government Solicitor. When he died Sir Basil Scott made a reference from the Bench. That was the only instance of a reference made for a solicitor. Mr. Nicholson was a cricketer. He was a very good wicket-keeper.

Sir Basil Scott wanted to make the Summer Vacation of eight weeks and the October Vacation of three weeks. He said that judges and lawyers were going to Europe during the May Vacation and one month was spent on boat and they must get a month for their stay in Europe. He asked the members of the Bar and they agreed that the May Vacation should be of eight weeks. Sir Basil Scott made the May Vacation of eight weeks and the October Vacation of three weeks. During the May Vacation there used to be no board for short causes. Sir Basil Scott in order to help junior members of the Bar ordered that the Vacation Judge should hear short causes once every fortnight, so that the seniors being out of Bombay, junior members might appear in those short causes.

On the last day of his term of office Sir Basil Scott sat on the Bench for two hours and then went to his Chambers. Mr. Bahadurji went to his Chamber and told him that the Original Side Bar wanted to give him a farewell address. Sir Basil Scott said that that should have been done when he was that day sitting on the Bench. When

he left the Bench he ceased to be Chief Justice and so he could not accept the proposal of the Original Side Bar. He accepted dinners given to him by judges and the Bar and some members of the Bar. H. E. the Governor gave a dinner in his honour. There he made a very good speech. He said that Sir Mathew Sausse known as Sausse the Silent did not go out to dine ; that Sir Richard Couch left Bombay to take charge of his office as Chief Justice of Calcutta and so there was not enough time to give him a dinner; that Sir Michael Westropp was suffering from gout and was unable to accept a dinner invitation ; that Sir Charles Sargent had quarrelled with the Governor ; that Sir Charles Farran and Sir Louis Kershaw died when they were working as Chief Justices ; that Sir Lawrence Jenkins was injured in a motor car accident and was unable to leave his house. He (Sir Basil Scott) was the first Chief Justice in whose honour H. E. the Governor had given a dinner.

Sir Norman Macleod occupied important judicial offices. He wrote several reports which Sir Lawrence Jenkins said were very good. He became a puisne judge of the Bombay High Court in 1907 and was appointed Chief Justice in 1919. He had a great capacity for work, a powerful grasp and mastery of facts and that rare gift of thinking rightly and in coming to the correct conclusion. He never grudged any labour. Once as a vacation judge he finished 96 short causes in one day when he sat on the Bench till 6 p.m. He was a judge during a difficult period when Original Side work was enormously increasing and many advocates thought that cases would take years before they were finished but his experience and industry and capacity for work coped with the difficulty and cases were soon finished and there were no arrears. Once Mr. H. C. Coyajee after his appeal before Macleod C.J. was finished showed to me the appeal paper book and told me that

Macleod C.J. finished in three hours the appeal which he would have argued for two days before any other Bench. His knowledge of commercial and bankruptcy law and the law relating to the acquisition of land enabled him to lay down important principles for the guidance of the judiciary and legal profession. Government appointed him to revise the Insolvency Acts. He upheld the dignity and prestige of his exalted office and won the respect and admiration of all the branches of the legal profession.

A District Judge when evidence was given before him did not follow a High Court judgment on admissibility of a document in evidence. The party who wanted the District Judge to follow that judgment filed an appeal. The Government Pleader appearing for the respondent in that appeal contended that no appeal lay. Macleod C.J. said that no appeal lay but the High Court had power to remove the case from the board of that District Judge and place it before another Judge. The District Judge was bound to follow the judgment of the High Court and if he persisted in not following that judgment the High Court would order that the case should be removed from his board and placed before another Judge. When the District Judge heard what Macleod C.J. had said he promptly followed the judgment of the High Court.

At that time judges used to sit on the Bench on the last day before vacation for an hour. Macleod J. once sat on the last day before the May Vacation till 2 p.m. when four cases remained on his board. All other judges had risen from the Bench and we thought that Macleod J. would not sit that day after 2 p.m. Myself, D. F. Mulla and B. J. Desai went to Green's Restaurant and had a very good lunch and a bottle of champagne. We thought we would go home and rest. When we came to the High Court we heard that Macleod J. was sitting to finish the remaining

cases. We asked one another whether we appeared to be in a fit condition to be in Court before Macleod J. However we appeared in Court and Macleod J. finished the cases in half an hour and we went home and took the rest we needed!

His portrait is in the Court which was known as Justice Macleod's Court. After he retired he continued to take interest in the work of the Bombay High Court and read Bombay Law Reports. Sir George Lowndes in a letter to Mr. F. A. Vakil, a Solicitor and partner in Ardesir Hormasji Dinshaw & Co. Solicitors wrote that Sir Norman Macleod was still taking interest in the Bombay High Court and was talking about cases decided in that Court after he retired.

Sir Amberson Marten, a chancery lawyer, was practising in England. He was a very good lawyer. He used to read very quickly a case cited before him and pointed out the ratio of the case. In 1926 he was appointed Chief Justice. A British barrister practising in India wrote in a newspaper that he was carefully reading the judgments of the then judges in India and the best judgments were those delivered by Sir Amberson Marten. There was a litigant who filed vexatious suits and used to appear in person. Marten C.J. told that litigant that though there was no Act in India against vexatious litigation he would under his power of administering justice and equity order the Prothonotary not to take that litigant's plaint on the file unless the Prothonotary was ordered by a High Court Judge to do so. Marten C.J. was a popular judge and maintained all the high traditions of his office.

Sir John Beaumont also a chancery lawyer, was practising in England, and was a K. C. An English barrister told Sir John Beaumont that if he had continued practising in England he would have been on the Bench there. Sir John Beaumont told that barrister that he had enjoyed his stay in Bombay and was glad he had

accepted the Chief Justiceship of the Bombay High Court. He was a very good lawyer. He seldom reserved his judgments and if he did so it was only for a day or two. His judgments are short and very good. His term of office was longer than that of any other Chief Justice of the Bombay High Court. He was a popular judge. He maintained all the high traditions of his office. After he retired he was appointed a member of the Judicial Committee of the Privy Council.

Sir Leonard Stone, a chancery lawyer, was practising in England. He succeeded Sir John Beaumont as Chief Justice. He was an upright judge. He acted as Chief Justice for five years and then retired. He improved the administration of the judiciary.

Mr. M. C. Chagla is well known to lawyers practising at present in India. He was a very good lawyer and advocate. He became a puisne judge and was the first Indian permanent Chief Justice. He was very popular and maintained all the high traditions of his office as Chief Justice and won the respect of all the branches of the legal profession. He is energetic and is sure to render very valuable service to his country.

The lines which the Persian poet Shaikh Sady has written about the wall of religion can be suitably applied to the "Wall of Justice".

"That Wall of Justice has no grief, has nothing to fear when such eminent chief justices are heads of the administration of justice and are supporters of that wall, just as travellers by sea have nothing to fear from the waves of a tempestuous sea when the prophet Noah is the captain of the ship."

Up to the year 1907 at least one I.C.S. Judge was a member of the Executive Council of H. E. the Governor. In 1907 Fulton J. (I.C.S.) retired as a member of the said Executive Council and no I.C.S. judge was appointed a member of that Council. In about

1919 Hayward J. (I.C.S.) was appointed a member of the said Council where he did very good work. The greatest I.C.S. judge was Sir Maxwell Melvill. When Sir Lawrence Jenkins was Chief Justice I asked Mr. Inverarity who had been practising in Bombay since 1870 who in his opinion was the greatest judge of the Bombay High Court. He said that Westropp C.J., Sargent C.J., Maxwell Melvill J. (I.C.S.), Farran C.J. and Jenkins C.J. were great judges and if he was asked who of these was greater, he would say they were equally great. Sir Charles Sargent wept when Sir Maxwell Melvill died. He said the Bombay High Court had lost its best judge.

Parsons J. (I.C.S.) was a strong judge. He was once hearing an Originating Summons about the construction of a will on the Original Side. Counsel for the plaintiff as well as the defendant had brought from the library law reports. Parsons J. said that it was not necessary to cite any case. Clauses of the will should be read to him and he would answer the questions. Thus he finished the case in a short time. He was a popular judge. He was a barrister. Sir Phirozshah Mehta and Sir Chimanlal Setalvad contended that Parsons J. should be made Chief Justice. But as he was an I.C.S. Judge he was not appointed Chief Justice.

Batchelor J. (I.C.S.) was the youngest judge on the Bench. He was about 33 when he became a High Court Judge. He was a scholar. His judgments are written in good style and read well. He spoke Gujarati like a Gujarati Hindu. When he was hearing a case on the Original Side of the High Court a witness was saying : "Hashe Hashe" (may be, may be). Batchelor J. told the witness "Alia Hashe Hashe Nahi Chalse ; Hatu Ke Na Hatu" (Fellow, may be may be won't do. Say, was it or was it not). The Bar gave him a dinner when he retired. The last sentence of his speech was : "Hame to jaye chiye

pun Hamari pur meherbani rakhjo” (we are going but show kindness towards us.)

Beaman J. (I.C.S.) had very bad eye sight but a wonderful memory. He took notes of evidence and arguments on the typewriter. He was a good judge and his judgments are good. Once he told me that when he was a District Judge when evidence was given by parties and witnesses, he used to order a cow to be produced in the compound of the Court and he used to tell every witness : “ *Bava Aai puchdi hathma levo ne sachu bolo* ” (Father, hold in your hand the tail and tell the truth). He said that truth was out in a short time and justice was done. The High Court did not approve of this practice and he had to give it up. He once wrote an article on a controversial subject in the Times of India. Sir Basil Scott C.J. told him that a High Court judge should not write such articles. Sir Chimanlal Setalvad who was a member of the local Legislative Council said that he would ask a question in the Council whether a High Court Judge could write such an article. However, the matter was dropped as Beaman J. said that he would not write any other article in any newspaper. He was not a barrister. After he retired he applied to the Chief Justice and judges of the High Court for admission as an advocate of the High Court. He was admitted as an advocate on condition that he should not practise in any Court in the City of Bombay. He practised for about two years in the District Courts. He was a great mason. He was the founder of Lodge Imperial Brotherhood.

Hayward J., Pratt J., Fawcett J., Crump J., Broomfield J., and Madgavkar J. were good I.C.S. judges. Crump J. tried the Bavla murder case. His summing-up was so good that Macleod C. J. told the Prothonotary to make copies of this summing-up and send a copy to every judge. Broomfield J. as a District Judge in the trial of Mahatma Gandhi, who pleaded guilty, delivered

a very good judgment which Sir Thomas Strangman has given in his book "Indian Courts and Characters".

Muncherji Khareghat J. (I.C.S.) acted as a judge of the High Court. He was the first Indian acting I.C.S. judge. He never passed a death sentence. He used to say that the death sentence should be abolished. When he was a District Judge he never passed a death sentence. He used to say from the Bench that if Government wanted a death sentence Government should file an appeal to the High Court. After he retired he became a trustee of the Parsi Panchayat. As such trustee he rendered valuable services to the Parsi community.

Madgavkar J. was the first permanent Indian I.C.S. judge. He was a very good judge. Once when he was sitting on the Original Side he told Indian Advocates that as they as well as he knew the vernacular languages witnesses should be examined in the language they were speaking and there should be no interpreter. Mr. Bhulabhai Desai was seen at his best in cross-examining a witness in Gujarati.

Our present Chief Justice is the first permanent I.C.S. Chief Justice of this great Court.

Mr. Nanabhai Haridas was the first permanent Indian judge. Telang J. was an advocate O.S. and had a very good practice on the Original Side of the High Court. British Judges and Counsel used to call him "Mr. T. Lang." Russell J. used to say that Telang J. spoke English like an Englishman. He was 39 years old when he was appointed a puisne judge of the Bombay High Court. He died when he was 42. A Full Bench was constituted to decide a point of Hindu law. Telang J. was the only Indian judge on that Bench and was the only judge who wrote a dissenting judgment. His judgment is followed by judges of other High Courts. Once that Full Bench case was cited before Tyabji J. He said that the

dissenting judgment was a good judgment but he was bound by the Full Bench decision. Telang J. was a great educationist and delivered many lectures. He was the first Indian Vice-Chancellor of the Bombay University. He was a member of the Indian National Congress and was a follower of Sir Phirozshah Mehta.

Ranade J. was an advocate O.S. and was appointed a District Judge. In 1893 he became a puisne Judge of the Bombay High Court. Parsons and Ranade, JJ. made a very good Appellate Side Bench. Ranade J. was better known as a historian and philosopher than as a lawyer. He wrote such exceptionally good answer papers in the Examination of Master of Arts of the Bombay University that his English examiners sent copies of his answers to the Oxford and Cambridge Universities. He was a man of high ideals and of saintly life. Once he said in a lecture where missionaries were present that God was known and worshipped in India before a single missionary entered India. When he died several business places in Bombay were closed as a mark of respect.

Tyabji J. was a good advocate and had very good practice at the Bar. He was President of the Indian National Congress. He was a good judge. He was a senior barrister judge when Sir Lawrence Jenkins was Chief Justice and it was expected that he would be the first Indian Chief Justice. He went to London on leave and died there. His body was brought to Bombay and his funeral took place in Bombay.

Chandavarkar J. had a very good practice on the Appellate Side, when he became a judge. He used to keep before him notes of cases made by him and he used constantly to refer to them. Sometimes pleaders used to tell Chandavarkar J. that his Lordship should hear them and not refer to those notes. Once he sat on the Original Side and evidence was led before him. A question

as to the admissibility of evidence arose. Advocates argued before him. He said that he would consult the Chief Justice Sir Lawrence Jenkins about the admissibility of that evidence. He had a talk with the Chief Justice during the luncheon interval. When he came back he told the advocates that the Chief Justice said that he could not advise him and he must decide the point himself. An appeal might be filed and the Chief Justice would have to consider that point. He was an educationist and a follower of Sir Phirozshah Mehta. He delivered many lectures in Bombay and was very popular. He was a Speaker in the Bombay Legislative Council.

Davar J. at first practised in the Small Causes Court. He had very good practice there. Then he began practising in the High Court. He was a brilliant cross-examiner and a very good advocate. Sometimes his senior, an English Counsel, after examination-in-chief of a witness was finished would leave the Court so that Mr. Davar might cross-examine the witness. Sir Dinshaw Davar was very frank. He used to say that he had not read law reports. He rarely went to argue Original Side appeals. But sometimes he argued Original Side appeals and Sir Lawrence Jenkins liked his arguments. He was reluctant to accept the judgeship of the High Court. Sir Lawrence Jenkins told him that he wanted to appoint an Indian judge and he was the best Indian and he should accept and he accepted the judgeship. His judgments on facts were seldom reversed. If law points were properly argued before him he used to write very good judgments on points of law. A gift in perpetuity for the performance of mass for the soul of the deceased was held void in England on the ground that it was a superstitious use. Permanent bequest by a Parsi for the performance of Muktaḍ and Bajrojgar ceremonies was held to be not charitable (11 Bom. 441). Candy J. followed

11 Bombay and held such a bequest to be void. The bequest was of Rs. 20,000. The trustee who was one of the heirs of the testator showed to Candy J. in Court currency notes of Rs. 20,000 and said that all heirs were not going to take the money but were going to give the same in charity. Davar J. in *Jamshedji v. Soonabai* (33 Bom. 122), where there was a bequest of Rs. 30,000 for the performance of Muktaḍ ceremony held that bequests for the performance of Muktaḍ and Bujroḡgar ceremonies were valid charitable bequests for such ceremonies included prayers for the spiritual welfare of all Zoroastrians and tended to the advancement of the Zoroastrian religion. Sir Fredrick Pollock was of the opinion that the decision of Davar J. was correct. In 1919 A. C. 815 the House of Lords held that a gift in perpetuity for the performance of masses for the soul of the deceased was not a superstitious use. The judgment of Lord Birkenhead in that case is very much like the judgment of Davar J. and many lawyers in Bombay thought that Lord Birkenhead must have seen the judgment of Davar J. in *Jamshedji v. Soonabai*.

Sir Lallubhai Shah was a Government Pleader and became a puisne judge. Once he dismissed an appeal filed by an accused who was sentenced to imprisonment by a District Judge. Subsequently he found that the offence for which that accused was convicted was committed by another person. He therefore went to Banaras for a holy bath and prayers. He used to go daily to the Orient Club but if any member there talked about Courts or law he would at once go out of the Club. He had a very high sense of duty and keen desire to do justice. He was a man of high ideals.

Rangnekar J. was a good lawyer. He used to sit with Sir John Beaumont C.J. to hear Original Side appeals. Beaumont, C. J. told me that Rangnekar J. was very good lawyer and must have a very good practice at the Bar.

Mr. Kania had good practice at the Bar. He became a puisne judge when he was 39 years old. He had a very good knowledge of commercial law and had a keen desire to do justice. He became the first Chief Justice of the Supreme Court of India.

Tendolkar J. was a good lawyer. He was a very good judge. His death was a great loss to the Bombay High Court. He was very popular and maintained all the high traditions of the Bench.

The Original Side Bar was for a long time a Bar of British barristers. These British barristers were very good lawyers and advocates and were such as would have adorned any Bar.

Mr. Inverarity was a great lawyer and a great advocate. He used to come to Bombay after the October Vacation and leave Bombay for Scotland on the 1st day of the May Vacation. When the attorneys heard that he was coming to Bombay by a particular boat briefs were sent to Aden to be delivered to him at Aden. Sometimes he went straight from the boat to the High Court to conduct a case. If he had conducted a case in the lower Court he would argue an appeal in that case without reading the appeal paper book. He had a very good memory and never made notes. When he was not conducting a case he was seen in the library reading law reports or writing opinions or drawing pleadings. Facts fell on his mind like photographic plates in all their legal aspects. He used to tell juniors not to quarrel with judges. Even if they did not like what a judge said they must know that the judge was doing his duty. He was an honorary member of the Calcutta High Court library. British as well as Indian members of the Original Side Bar acknowledged that he was the best lawyer and advocate. He was born in Bombay and died in Bombay.

Sir George Lowndes was a very good lawyer and advocate and had very good practice. After he left the Bombay Bar he

practised in the Privy Council. Government of India offered to him the law membership which he was reluctant to accept. He consulted some law lords in England and they said that it was his duty to accept the law membership and he accepted it. Thereafter he became a member of the Judicial Committee of the Privy Council.

Sir Thomas Strangman was a brilliant cross-examiner and a very good lawyer and advocate. In a short time he had very good practice. He was Advocate General for many years. He was popular and the members of the Bar liked him. After he retired as Advocate General he continued his practice in Bombay for some time. After he left the Bombay Bar he practised in the Privy Council where he had a very good practice.

Mr. Raikes was very good lawyer and advocate and acted as Advocate General. Mr. Jardine was offered a judgeship but he did not accept it. He would have been a good judge. Mr. Raikes and Mr. Jardine were good cricketers. At their suggestion the Original Side Bar started the Bombay Bar Gymkhana at Chowpatty. Judges used to come to that Gymkhana as guests. Sir Norman Macleod once said that the Bar Gymkhana was better than many clubs in Bombay. The Bar Gymkhana used to invite distinguished lawyers who came to Bombay. Viscount Simon was one of them. It was closed after the Second World War. Mr. Raikes and Mr. Jardine, after they retired, practised in the Privy Council.

Mr. Coltman was the last British barrister. He was practising in Rangoon. Then he went to practise in the Privy Council. Mr. Raikes advised him to go to Bombay and practise there. He came to Bombay in 1921. He was a good lawyer and advocate and had very good practice in a short time. The lawyers in Bombay liked him.

Sir Phirozshah Mehta was a great Indian. He was a very good advocate. He had to give up legal work because of his other

activities. He was an honorary member of the Calcutta High Court library. His chamber was opposite the Bombay University and very near the High Court but he never walked from his chamber to the High Court. He always came in a carriage-and-pair. His sepoy came with him with his briefs. He used to sit in the library till he was required in Court. In the library he was surrounded by lawyers who wanted to hear him. In his chamber after 6 p. m. junior members of the Bar used to go to see him and hear him. He was the greatest Municipal Councillor. He rendered valuable services to the Bombay University. He was a member of the Indian National Congress and had many followers. Even members of the Congress party outside the Bombay Presidency followed him. He was the greatest Indian of his time. When he died Sir Narayan Chandavarkar who attended his funeral made a speech about him in the compound of the Towers of Silence. He had won the respect and admiration of British inhabitants of India. In English newspapers he was compared with Sir Austin Chamberlain.

Sir Chimanlal Setalvad began his practice on the Appellate Side where he had very good practice. After he became Advocate O. S. he began practising on the Original Side. He was a brilliant debater and a very good lawyer and had very good practice. He was a follower of Sir Phirozshah Mehta and like him, had to give up legal work because of his other activities. He was a Municipal Councillor and a Vice-Chancellor of the Bombay University. He became an Additional Judge of the High Court. He became a member of the Governor's Executive Council. He was very kind hearted and was ever ready to help junior members of the Bar. As an Indian he was next to Sir Phirozshah Mehta.

Mr. Bahadurji acted as Advocate General. He was very eager to maintain the high traditions of the legal profession. He was

very popular and the members of the Bar liked him. He was offered judgeship but he did not accept it.

Mr. Jinnah was a very good advocate. He was a member of the Indian National Congress. He was a member of the Legislative Assembly. His activities are well known. He was the head of the Muslim League and founder and Governor General of Pakistan.

Messrs F. S. Talyarkhan and R. D. N. Wadia were good advocates and criminal lawyers. They had good practice in the Session Court. Mr. F. S. Talyarkhan acted as a Judge of the High Court.

Mr. J. D. Davar was a good cross-examiner like his father Sir Dinsha Davar. He was a good advocate and acted as a judge of the High Court.

Mr. Bhulabhai J. Desai was a professor of history in the Ahmedabad college. He became advocate O. S. His rise at the Bar was phenomenal. In a short time he was engaged in heavy cases. He was very persuasive and a very good lawyer and the best advocate. He acted as Advocate General. He was a member of the Legislative Assembly. An English member of Parliament who visited Delhi said that Mr. Desai was the best speaker in the Assembly. When he was very ill I told him to take rest. He told me that he loved politics and he would give up legal work. He was also a great Indian and rendered valuable services to his country. Shortly before his death he appeared in the I. N. A. trial and admirably conducted the defence. If he had lived longer he would have been an extremely useful citizen.

Mr. Taraporewalla was an articled clerk, and wanted to be an attorney. He however did not become an attorney. He was practising in Rajkot. Thereafter he became a barrister. The senior Counsel with whom he read in England gave him a very good

certificate. Sir Lawrence Jenkins saw that certificate and said that he would see that Mr. Taraporewalla was taken by a senior Counsel in his chamber. He read in the chamber of Sir Thomas Strangman. He was a very good lawyer and had very good practice. He acted as a judge and as Advocate General. He was very kind hearted and was ever ready to help junior members of the Bar.

Mr. M. R. Jaykar mainly practised on the Appellate Side of the High Court. He was an educationist and was a very good speaker. He was a member of the Indian National Congress and rendered useful services to his country. He became a member of the Judicial Committee of the Privy Council.

Sir Dinsha Mulla was the greatest writer of law books in India. All his books are cited in law Courts. He was appointed Tagore Law Lecturer. He acted as Advocate General. He also acted as a judge of the High Court. He was a law member and became a Privy Councillor.

Bombay Original Side Bar has been a very good Bar. It gave India its first Chief Justice, first Attorney General and first Solicitor General.

The Appellate Side Bar was a very strong Bar when Jenkins C. J. and Scott C.J. were Chief Justices. A British Barrister arguing an appeal before Jenkins C.J. said that he had tried to find an authority but was unable to find it. Jenkins C.J. told him that if he had consulted pleaders they would have given him the authority which he was unable to find. Mr. Chandavarkar became a judge of the High Court. Mr. Maneksha Talyarkhan had very good practice. He died in England in a railway accident. Rao Saheb Kirtikar was Government Pleader and acted as a judge of the High Court. Mr. Daji Abaji Khare, a great friend of Lokamanya Tilak, was a good lawyer and advocate. Mr. Chaubal afterwards Sir Mahadev Chaubal was a very good advocate. Once he was

arguing a criminal appeal for an accused person before Russell and Aston JJ. Russell J. was in his favour and Aston J. was against him. Both judges had a long discussion but did not agree and gave up talking to each other. Russell J. was suffering from sprue (a disease) and inspite of his best efforts to avoid sleep he used to doze off on the Bench. At 1-55 p.m. he was sleeping. At 2-00 p.m. Aston J. left the Court leaving Russell J. on the bench. Sir Lawrence Jenkins passed by that Court and saw that the Court was empty and Russell J. was sleeping on the Bench. He asked the Registrar, Appellate Side, to wake up Russell J. and take him to his chamber. He told Aston J. that he should not have gone out of the Court without his colleague. When more than one judge sat on the Bench they must enter the Court together and leave the Court together. It was very wrong of him to have left the Court alone without Russell J. Incidentally, Mr. Chaubal, won the appeal. Mr. Chaubal was a Government Pleader and acted as a judge of the High Court. When Sir Basil Scott was Chief Justice Sir Mahadev Chaubal was appointed the first Indian member of the Governor's Executive Council. Mr. Montague, Secretary of State for India, came to Bombay for two or three days. The Byculla Club gave him a dinner. To that dinner the Governor and all the members of his Executive Council except Sir Mahadev Chaubal were invited. Lord Willingdon who was the Governor told the members of the Byculla Club to invite Sir Mahadev Chaubal but they said that their rules were against inviting any Indian. Lord Willingdon arranged that Sir Mahadev Chaubal should invite Mr. Montague to a tea party. Lord Willingdon thereafter started the Willingdon Sports Club of which Indians and Europeans could become members.

Diwan Bahadur Rao was a very good speaker. He was Government Pleader and acted as a judge of the High Court.

Mr. H. C. Coyajee was a good lawyer and advocate. He became advocate O. S. He several times acted as a judge of the High Court.

Mr. Gokhale, Mr. Nadkarni, Mr. Mulgaonkar, Mr. Patkar and Mr. Shingne were good lawyers and advocates. Jenkins C.J. asked several pleaders to become advocates O. S., but as they were in good practice on the Appellate Side, they did not want to be advocates O. S.

Mr. Kelkar was in good practice. Mr. Kelkar had once briefed Mr. Bhulabhai J. Desai who could not attend as he was engaged in another Court. Mr. Kelkar applied for an adjournment on the ground that Mr. Desai could not attend. Macleod C.J. said that he was there and that he should go on with the case. Mr. Kelkar said that if the case was a weak one it would be better if Counsel he had briefed would lose it. If he conducted it his client would say that he did not argue it properly and lost it and if Counsel had conducted it Counsel would have won. Both the judges laughed and said that on that statement the appeal should be dismissed. However they asked him to argue the appeal which he did and the appeal was dismissed.

India has produced many good lawyers. British judges and British lawyers have spoken very highly of the Indian legal talent. Whitely Stokes in his introduction to the Anglo-Indian Code refers to the judgments of Indian High Courts from 1862 to 1889 as his principal source of help and observes :

“Of these judgments none could be read with more pleasure and few with more profit than those of the Hindu Mutaswami Iyer and of the Mahomedan Sayed Mahmood. For the subtle races that produce such lawyers no legal doctrine can be too refined, no legal machinery can be too elaborate”.

In the foot-note he mentions the name of that great Bengal jurist Dr. Rash Behary Ghosh and states that Dr. Ghosh's treatise on mortgage was of great help to him in drafting the chapter on mortgages of the Transfer of Property Act. There is no dearth of legal talent. However those who are now practising in the Courts in India should maintain the high traditions of the legal profession.

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HALF A CENTURY OF REMINISCENCES
OF Mr. K. M. MUNSHI

AS I write these reminiscences, my mind is crowded with memories of half a century of association with the Bombay High Court ; of judges, lawyers and litigants ; of cases upon cases which either I saw fought or fought them myself. But I can write only about those which have left a vivid imprint on my mind.

Reminiscences are impressions reproduced in words, of the impact of certain men and incidents on the memory of the author. By their very nature they are autobiographical and invariably tend to emphasise, undertone or ignore certain aspects of every situation depending upon the nature of the impact. The fault, if any, does not lie with the author, but with the nature of this form of literature.

I joined the High Court in December 1910 for keeping terms for the Advocate (O. S.) examination, a poor, helpless young man, whose only asset was his will to work. Keeping terms for the examination was a joke. I spent most of the day in the Petit Library only to step into the Court of Justice Beaman a few minutes before the rising of the Court to get the obliging Registrar to sign my diary.

It was in the Court of Beaman J. that, in 1911, I came into contact with one Burjorji Rattanji, a young Parsi, who had lost the money he had won in St. Leger's Sweep in an orgie of wild

speculation. He was being sued by a Marwari firm, Messrs. Bhagvandas Parashuram. I helped him in the preparation of the case ; that was my first practical experience of how a suit on the Original Side was prepared and fought. In return, Burjorji presented me with law books necessary for my studies. The suit, decreed against him, was ultimately dismissed by the Privy Council (Bhagvandas vs. Burjorji, 45 I. A., p . 29).

In March 1913, I passed the Advocate (O.S.) examination, and in a well cut coat and bands, both borrowed, was sworn in before Beaman, J. I remember that as I hesitatingly lowered my puny self on a seat between two stalwarts of the Bar, I was trembling with fright.

THE AGE OF SIR BASIL SCOTT (1913—1918)

Sir Basil Scott, the Chief Justice, stern and formal, was dominating of presence and stingy of speech. He presided over the First Court with a terrifying solemnity, most of the time drawing doodles on the blotting pad on the pretext of taking notes.

Scott was a great stickler for propriety. Not even the formidable Advocate-General, Sir Thomas Strangman, the terror of the junior Bar, could indulge in his characteristic aggressiveness in his Court.

A few days after I was enrolled, I appeared before the First Court for the appellant in a pauper appeal. With Scott C. J. on the Bench and Strangman to oppose me, I felt like diving under the table. The first few sentences of my address were an incoherent jumble. However, the Bench was patient and sympathetic and in a few minutes I found my feet.

In the course of my submissions, I happened to make an incorrect statement. Strangman sprang up, jingling the keys in his trouser pocket—a sure sign that he was going to be bellicose. I felt

like collapsing. However, before he could say a few words, came the firm and decisive remark of the Chief Justice : “ Mr. Advocate General, your innings are still to come. Please sit down.” Strangman sat down without a word. “ Mr. Moonshee, you might proceed ”, said the Chief Justice, and I did so with growing confidence.

At the end of my address I had acquired such confidence by the way the Chief Justice had heard me that I ventured to say : “ My Lord, this is my first appearance before Your Lordships and I was very nervous at the beginning. May I repeat my argument on the first point which, I think, I could not place before Your Lordship coherently ? ” There was not a flicker of smile on the lips of the Chief Justice as he replied : “ Mr. Moonshee, you may repeat ”.

Later I outgrew my dread of Strangman and found him a genial man without any seniority complex. It was one of the pleasantest experiences of the Bar to be told a spicy story by Strangman at the end of a trying conference.

His mastery over Indian statute law was great. He never relied upon memory ; he never appealed to general principles of English law. No sooner you gave him the facts of a case, he would take the Civil Court Manual, turn up the appropriate Section of the relevant Act, and within a few minutes you had your facts re-shaped according to law.

The Judge in whose Court I made some appearances from the start was Justice Beaman, to whom I was introduced by my friend Shri B. G. Kher (later Chief Minister of Bombay), then his reader. He was invariably kind to juniors.

Beaman J. was practically blind, though he had many extraordinary gifts. Day after day he could record the evidence given in Court on his typewriter, and while dictating judgments, however elaborate, he could summarise the evidence and deal with cases

with accuracy from memory. He had a weakness for discussing abstract principles, which often made his judgments difficult to follow.

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Justice Dinshah Davar was another formidable judge on the Bench at the time. For two years before his death in 1916, he was ailing most of the time, and sat on the Bench with a glass of water and a bottle of medicine. Having been a very shrewd and practical lawyer, he knew most of the well-known litigants, and sometimes made up his mind even before the evidence was led. He was fond of making caustic remarks which were often disconcerting to the Bar. To the diffident junior, however, he was uniformly kind and helpful, to the assertive and over-confident, merciless, I was lucky to be in the former category.

The age of Scott was of sedate and leisurely justice. It was dominated by eminent counsel and not-so-eminent judges. The Original Side litigation was run by a close guild of thoroughbred solicitors. Cases filed on the Original Side were not too many and were heard at a leisurely pace. Pleadings, mostly drafted and not dictated, were meticulously precise, though arguments were elaborate. Most of the work was monopolised by seniors, and rarely did a one-guinea brief for adjournment come the way of a junior.

Compared to what it is now, the Bar Library was a vast vacant place in which a few young lawyers, with their feet placed on the table, gossiped the whole day round. Uproarious laughter could always be heard at one or the other of the tables, and the flow of spicy anecdotes and scandalous gossip relieved the tedium of idle hours.

*In the Common Rooms, however, some juniors pursued *niskama karma*—action without expectation of rewards. Homi*

Mody—now Sir Homi—worked on Sir Phirozeshah Mehta's biography. Motilal Setalvad worked his father's briefs. Thanavala pondered over law reports, getting ready to provide references on every point to any inquisitive senior. And all the time, I, wondering how to keep the pot boiling, went on preparing draft pleadings for Bhulabhai Desai whose chamber I had joined as a "devil", most of which he consigned to the waste-paper basket.

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John Duncan Inverarity was for years the acknowledged leader of the Bombay Bar having joined it in 1870, and remained so throughout life. When I came to the Bar, a veritable mythology had grown up around him.

In almost any walk of life, Inverarity would have risen to the top, but he was content to be a lawyer and a lion hunter. He lived in a dingy old room in the Byculla Club in Bombay for about six months, spending the rest of the year in his native Scotland, playing the prosperous laird.

He was the most uncanny lawyer I have known. His superiority over all other lawyers lay in his wonderful equipment, his stupendous memory, his thorough grasp of facts, his unerring mastery of legal principles and a rare talent of presenting facts. When he re-stated the facts of a case they fell into a pattern, and the case became the simplest of simple ones with all points entirely in his favour. His cross-examination, consisting of short and direct questions, was devastating, his sense of humour superb.

He had a genius for picking out the only point which could win a case. One day, bubbling over with a junior's enthusiasm for newly discovered points, I went to him with several authorities and told him that there were quite a few good points on which we could win the suit. In his brusque manner, he replied: "Young

man, there are always ten good points in a case. Keep only one for yourself and leave the other side to discover the rest ”.

He continued to practise till fatal illness laid its hand on him in the corridor of the Court. He died on December 4, 1923, and when we laid him in his grave, all of us felt that the High Court was no longer the same.

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Sir Chimanlal Setalvad, with whom I could claim the privilege of years of respectful friendship, was a great lawyer. Starting life very humbly, he became in succession, a leading pleader on the Appellate Side, one of the most brilliant advocates on the Original Side, a very popular judge though he occupied the Bench for a few months, and a capable Member of the Executive Council of the Governor of Bombay.

He had dignity and independence. I cannot forget the high-water-mark of forensic eloquence which he touched when he argued the appeal reported in *Surajmal v. Horniman*, 20, Bombay Law Reporter, p. 184. Poise combined with lucidity and accuracy of expression went to produce that masterly address.

The greatness of Sir Chimanlal as a lawyer lay in the fact that he never stooped to conquer, never indulged in the cheap devices which sometimes even eminent seniors are led into adopting, consciously, or unconsciously. He carried the judge with him by the sheer force of his intellectual power and his shrewdness in sensing the trend of his mind. To the other side, he was invariably polite, though very curt if an offence was given. I never knew him to take advantage of a junior, however raw the latter happened to be.

It was said of him that he was the true “ socialist ” in the profession. He believed in working only for five days in a week and for five hours a day and no more. If you happened to be his

junior—as I was in many important cases—you must meet him in a conference, which often began at 10 p.m. and place all the facts before him. But as you stated them, he would re-state them for your benefit, take up his pen and make elaborate notes. From these notes alone—rarely aided by other materials from the brief—he would argue the case as he alone could do. His robust common sense, his large experience and his grasp of the fundamental principles of law supplied the rest.

He died on December 10, 1947 at the age of 82, admired, respected, beloved by the Bar. Till a couple of years before his death, he would drift into the Bar Library, sit down at a table and gossip with juniors. He had the rare gift of enjoying jokes even at his own expense.

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Mahomed Ali Jinnah was another eminent Indian Lawyer of this period. Tall and spare and impeccably dressed, he stood in a class by himself. His advocacy was characterised by strong commonsense, great courage and forthright approach. A man of great integrity, he would never stoop to trickery though he could be devastating if a Judge or an opponent was inclined to be offensive.

Once a firm of Solicitors on behalf of their clients had asked him to put some questions in the Legislative Assembly of which he was a member and wanted to enlist his enthusiastic support by offering a sort of bribe in the shape of a brief for opinion marked 100 gms., a colossal figure for such a brief in those days. He grew wild with rage and flung the brief out of his chamber.

Once while attending a conference with Strangman, he found the latter offensive. Immediately he walked out of the chamber, and for years, never spoke to Strangman, nor addressed

him as " my learned friend ". If a brief was offered to him with Strangman, the solicitor had to hold two separate conferences to instruct his counsel.

I had very happy relations with him. It was a delight for me to work with him when he was the President of the Bombay Branch of the Home Rule League and I, one of its Secretaries. In fact, I left the League and the Congress with him in 1919 when Gandhiji captured them. Our personal relations remained cordial till we drifted apart when after becoming the President of the Muslim League he discouraged contacts with those who has political differences with him.

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In June 1913, I joined the Chambers of Bhulabhai Desai, then a comparative junior who had almost arrived in the front rank and was much in demand. Bhulabhai had a razor-sharp intellect. Hard working, subtle, clever, he was, even in those days, the most persuasive counsel at the Bar.

Devilling, in those days, was an institution, for a " devil " became part of the Chambers of the leader and acquired both training and experience. Bhulabhai then had no faith in " devils ". On the first day he told me : " Munshi, I will pass on to you the advice which, on the first day I joined his Chambers, Lowndes gave me : If you will be useful to me, I will be useful to you." Reading in his Chambers meant for me intensive training as he was an able draftsman and gave his opinions after a tireless struggle with adverse points and awkward facts.

The other rising junior at the time who had then already arrived was Jamshedji Kanga, now the doyen of the profession. He had risen in the profession by hard work, thorough reliability and a genial temper. He did not believe in pyrotechnics ; never extemporized. His knowledge of law was profound. His great

common sense invariably brought a balanced outlook on even difficult cases.

On the Appellate Side, Dewan Bahadur Rao and H. C. Coyajee were outstanding Advocates ; both methodical and balanced, were thorough in their preparation. M. R. Jayakar was rising to the top of the Appellate Side Bar and few lawyers at the Bar during all these years could out-rival him in brilliancy of address.

THE AGE OF SIR NORMAN MACLEOD (1919-1927).

In 1916 Scott C. J. was appointed a member of the Rowlatt Commission, whose Report was responsible for the Rowlatt Acts which used to be called the " Black Acts " in those days. Naturally, therefore, when he returned to the Bench, the Chief Justice had become rather unpopular. During his absence Sir Stanley Batchelor acted as the Chief Justice, but it was Justice Norman Macleod who ultimately emerged as the outstanding judge on the Bench.

Macleod was the Official Assignee of the High Court before his elevation to the Bench in 1909. He assumed the office as Chief Justice in 1919.

On the Bench, Macleod J. was gruff and temperamental. He suffered under the disadvantage, if it can be so called, of having the gift of a very quick perception. In his anxiety to do substantial justice—whatever it meant—Macleod brushed aside all formal requirements of law and procedure. He would discover, of course according to him, the one and only point in a case, no sooner the pleadings were read. He had never any doubt about it and often an abrupt question from the Bench scattered counsel's advocacy to the winds.

With him, as the dominating member of the Bench, began the era of "expeditious justice".

With the tradition of "expeditious justice" firmly established in his court, counsel were driven to depend more and more on their agility of mind than on careful preparation. Once the judge nodded his head one way or the other, counsel had to resort to a settlement or to lead hastily selected but attenuated evidence suited to the demand of the Bench. The protest of the Bar and the public on this practice was voiced by Sir Chimanlal Setalvad who in 1920 while taking his seat on the Bench, said that "justice should not only be done, but should be seen as having been done".

In fairness it must be said that in most cases the view which Macleod J. took was substantially correct. He never forced a settlement except by pointing out the strength or the weakness of what he thought the pivotal point in the case. But his example proved infectious. In the hands of judges whose capacity for perceiving the real point in a case was limited, the exercise of personal pressure to get suits settled became fashionable.

As a result of this tendency few counsels could resist bringing pressure on their clients or the solicitors to rise to the expectations of the Bench. I know of one instance when a client shouted at his senior counsel. "I have given you the brief to fight my case and not to settle it". Nevertheless, the counsel, in exercise of his general authority, settled the suit.

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The First World War ended by the Armistice of November 1919. During the earlier months, there had been heavy speculation in forward transaction in piecegoods, particularly "Nine Dragon" Japanese long cloth. The sudden end of the war led to a crash in the piecegoods market. The purchasers refused to take delivery and the sellers rushed to the High Court to recover damages.

The average number of suits filed on the Original Side till then was about 1,200 a year. Now the number shot up to over 6,000, and some of us, juniors, began to receive our long awaited due. I remember having had to draft four or five pleadings per day, sometimes all dealing with "Nine Dragon" long cloth.

In 1920, these suits came on board before Macleod and in most of them Jamshedji Kanga opposed Bhulabhai Desai. Expeditious justice went in action. The Judge called upon the seller to produce the godown book of his own vendor, and if the bales were found recorded in the book as being in the godown on the day of delivery, he passed the decree in favour of the seller without further hearing.

Counsel took the cue from him. No sooner a case was reached, they called for the godown book of the previous vendor and if the bales figured there, a consent decree was taken ; the only point left to be higgled about was the quantum of damages. On some days, between the learned Judge, Kanga and Desai, as many as dozen or more suits were disposed of. None of them had time to discover that the bales available in Bombay were limited in number and once the market came to know the vital point which the Judge wanted to be proved, new books of the vendors with appropriate entries came into existence. This was proved later in some other Courts where evidence was tested at length.

However, expeditious justice sometimes led neither to expedition nor to justice. In a case where I was led by Bhulabhai Desai, my leader, with his extraordinary gift of rising to the expectation of Macleod J., put the point in the case so neatly that, regardless of the facts, we got a decree for about twice the amount to which in any event we would have been entitled. The matter

went up before an Appellate Bench presided over by Amberson Marten J., who had scrupulous regard not only for law, but the forms of law as well. He delivered a thundering judgment on the irregular way in which the case was handled by the lower court and ordered a re-trial.

Macleod, who in the meantime had become the Chief Justice, had the case placed before him. He was angry that his disposal of the case had been challenged. Chimanlal Setalvad who appeared for the successful Appellant (Original Defendant) was no less emphatic in support of the decision of the Appellate Court.

Ultimately Macleod referred the case to Pratt J., who after a long trial gave us the decree, but for an amount very much smaller than the amount decreed by Macleod in the trial court, as it should have been, if the case had been allowed to be properly conducted. The defendant went up in appeal and the decree of Pratt J. was confirmed.

Expeditious justice had the result of involving not less than six judges in the case, five hearings four of them been lengthy, and the costs on both sides perhaps very much more than the amount of the decree.

When as Chief Justice, Macleod presided over the Appellate Side Bench, there was dismay and panic. In appeal after appeal, he either called upon the respondent to support the judgment, or dismissed the appeal after putting a few points to the appellant. The Appellate Side lawyers trained to place studied arguments before the Court did not know what to do. Sometime Sir Lallubhai Shah, the other Judge on the Bench, came to their rescue. After the Chief Justice had handed back the papers dismissing the appeal, he would quietly tell the lawyers to argue the case, because, as he said, he was 'not so quick at appreciating the points of the case as' 'my Lord the Chief Justice'. Shortly afterwards,

Lallubhai Shah was dropped as a companion Judge from the First Bench.

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In spite of this Sir Norman Macleod was a great Judge. When he felt that there was a substantive point, he would go into it carefully, though even then his impatience could be controlled only if there was a strong and pertinacious counsel.

The murder trial of a young zamindar of Madras, over which he presided in the full panoply of wig, red gown and knickers, showed Macleod C.J., at his grandest. The accused was charged with having shot dead the British principal of a Zamindar's College in which he was studying. As a result, the Anglo-Indian community, in Madras lashed itself into a frenzy, considering it a political murder. Its leading members openly declared that the boy should be hanged in front of the Principal's bungalow. The Indian community took up the challenge, and the case was transferred to the Bombay High Court.

Day after day, Macleod as the presiding Judge, handled the prosecution witnesses, testing their varacity and bringing out incongruities. After one of his ablest performances in addressing the jury, a verdict of not guilty was returned, and the crowded Central Court echoed to thunderous applause.

In the course of the trial, some very vital points which had not struck the defence, were made by the Judge himself. A few days later, when I happened to meet him, while talking about the case, he told me : " I had waited for the mosquito net to be produced through which the shot was fired. Had it been produced, I would have been able to tell you exactly which of the others had fired the shot by drawing a line through the through which it had passed. The way the bullet ran this boy with his height could never have fired the shot which killed the man "

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The balance which was being tilted in the time of Macleod J. in favour of expeditious justice, was however adjusted by some of his colleagues.

Of all the judges, great and small, that I have known, Lallubhai Shah stands on a pedestal of his own. Slow, cautious, fair-minded, he was, along with Marten J. and Fawcett J., the most judicial-minded judges I have ever come across in our court. He never took a decision until, in all conscience, he was sure that his judgment was right. In face of able advocacy his sub-conscious mind ceaselessly struggled against the suspicion that an attempt was being made to get him to take an unjudicial course. Above all, his independence was marvellous. Neither Government nor riches, neither colleagues nor counsel, could deflect him a hair's breadth from the stern sense of judicial duty with which he performed his work on the Bench as well as in all other spheres of life.

By judicial-mindedness I mean the quality in a judge of not being influenced by the papers read before the case is opened ; of being ready to listen to counsel till the end with an open mind ; of having scrupulous regard for relevancy and yet neither too talkative nor too silent nor dogmatic ; of weighing the pros and cons of relevant points with unbiassed mind, and of writing the judgment in which all the points are dealt with in a proper perspective. Few judges are gifted with this quality in sufficient measure.

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Besides Shah J. and Marten J., Justice Pratt, Justice Fawcett and Justice Crump, all the three I.C.S. men, were judges in the highest traditions of the High Court. Their attitude to the Bar was invariably considerate, their knowledge of law reliable. They had above all the judicial mind. Fawcett J. being the most outstanding.

Kajiji J. was entirely different. Having come from a business family of Bombay and having been himself the Prothonotary of the

High Court for many years, he could fathom the mysteries of Bombay business, and had shrewd insight into the Indian book keeping. In deciding cases, he thought lightly of the forms of law, which under a sound judicial system are as important as the principles of law themselves. His treatment of juniors was far from encouraging. He made no secret of his view that his Court was meant only for seniors, though he made an exception of select juniors. He was uniformly kind to me.

While on the Bench, Kajiji J. involved himself in some business affair and ultimately had to resign after he had been examined as a witness at the hearing of the misfeasance summons in the Anglo-Indian Steamship Navigation Company (In Liquidation).

In Bai Gulab v. Jeevanlal (24 Bom. L. R. 5) case, Kajiji J., who believed that the judge need only be a man of the world, decreed restitution of conjugal rights, when the defence we had put forward on behalf of the woman was that the marriage, being anuloma, was not valid according to Hindu Law. Kajiji J., just before rising for the recess, delivered a judgment in favour of the husband, and in spite of my protests, ordered the girl to be produced immediately after recess, to be handed over to the husband.

I had anticipated that some such catastrophe was coming, and so, while the Judge was delivering judgment, I had scribbled some grounds of appeal on a rough piece of paper. No sooner the Court rose for the recess, I walked into the chambers of Macleod C.J. and complained to him that the learned Judge, in disregard of our plea that the execution should be postponed till after the period of appeal, had ordered immediately delivery of the girl to the husband at 3-30 p.m. I had no time to prepare the memo of appeal, no time to file it, no time to move the Court,

and in the meantime gross injustice was being done to her. Macleod C.J. took the rough notes of the grounds of appeal I had made and asked me to give notice to the other side to appear at 3-30 p.m. before his Court.

At 3-30 p.m. Strangman appeared for the husband, strongly protesting against the unceremonious way in which I was moving the Court. Macleod C.J. produced my rough draft, asked the Registrar to number it as an appeal, admitted the appeal straight-away and stayed the execution of the decree, which had not even been drawn up. The Advocate-General thundered against this irregularity. Macleod's reply was : " Where the marriage itself is challenged, how can I allow the woman to go and live with the man ?". If there had been another Chief Justice, the defendant would have been on a way to motherhood before the appeal could have been filed !

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Among the additional judges who graced the Bench during the period were Sir Chimanlal Setalvad, Jamshedji Kanga, H. C. Coyajee, D. F. Mulla and V. F. Taraporevala.

Though the requirements of the situation made it necessary to appoint additional judges, the practice of recruiting on the Bench practising lawyers who had no stability of tenure, scarcely added to the dignity and worth of the Bench.

Dinshaw Mulla was in a class by himself. He was a jurist both by temperament and ambition. He loved chamber work. His pleadings and opinions were neat and well thought out, but he shrank from court work. He preferred to spend time in writing or revising law books which had justly acquired a great reputation for lucidity and method. On the Bench, whenever possible, he would pursue a point of law through various authorities and sum up the law in his inimitable fashion. He had a hand in drafting

Bills which ultimately took shape as the Sale of Goods Act and the Partnership Act. The culminating point in his career came when he became a Judge of the Privy Council.

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The spate of litigation during the period gave an extraordinary scope to the junior advocates and incidentally led to what was termed "The Trial of the Seven Bishops", when in February 1921 seven courts were formed on the Original Side of the High Court on account of the heavy arrears of post-war litigation.

Bhulabhai Desai was then the counsel most in demand on the Original Side. Motilal Setalvad, M. V. Desai, Indravadan Mehta and myself were reading in his chambers, and Kanga having gone to the Bench, Kania, who was 'devilling' with him, also joined us. So did T. K. Thanawala.

In those days the juniors held the brief for senior counsel even for conducting cases. As most of the briefs on all the boards gravitated to Bhulabhai Desai, he used to ask one or the other of us to hold briefs for him in different Courts. So, when the great day came and seven Judges sat on the Original Side, Desai or one of us holding his brief appeared in almost all the cases on the boards of all the seven Courts.

This led to a furore in the Bar Library. Those who expected to make good during this season of plenty, noted our appearances, approached the Advocate-General and, in consultation with Inverarity, drew up a charge against us of being guilty of unprofessional conduct by carrying on business in partnership. Desai was also separately charged with having blackmailed a solicitor into marking a heavy fee on his brief by threatening to give it up in the middle of a case.

The Bar Association appointed a tribunal consisting of the Advocate-General, Sri Bahadurji and Sri Coyajee to hold

an enquiry. In the meantime it passed a rule abolishing the practice of holding briefs. The result was unexpected. From the next day, the briefs which we were 'holding' for Desai, came to some of us in our own right.

After an exhaustive enquiry, we were acquitted of the charge made against us and Bhulabhai, of the charge individually made against him, but bitterness between the two groups of counsel persisted for a long time.

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I have vivid recollections of some extraordinarily long-drawn-out cases conducted with rare thoroughness, which might favourably compare with such cases in the Chancery Courts in England.

The first one, *Advocate-General vs. Yusufally Ebrahim* (24 B.L.R. p. 1060), (generally known as *Chandabhoy gulla case*), was decided by Marten J. after a very protracted trial. In a very exhaustive judgment, he surveyed the history of the *Dawoodi Bohra community* as well as of the position of *Mullaji Saheb* as its religious head and trustee of the *gulla*. The controversy then raised had its off-shoots in the shape of diverse litigations in different courts during the last forty years, in some of which I happened to appear. The latest in which as usual, I appeared for *Mullaji Saheb*, was decided only in January 1962 by the Supreme Court in which the important question of religious freedom was involved.

Another suit which led to numerous inter-locutory and other proceedings with about a dozen counsel kept engaged on every occasion, was the partition suit filed by two of the grandsons of *Raja Bahadur Shivlal Motilal*, a leading Marwari banker of *Hyderabad*, against their father *Bansilal*, mother and minor brothers. The proceedings in the suit were a numerous the ill-will

between the warring members of the family insense. The course of the suit ran for several years, ultimately ending in a settlement in the Court of Justice Pratt.

In the elaborate arguments on a Hindu father's right to separate some of his sons and keep the others jointly with him, occupying several days, I led Kania for the minor sons represented by guardian *ad litem*. Supporting the father's contention—in spite of the angry protests of my boy clients—I had the opportunity of tracing elaborately a father's rights under Hindu Law from the Rig Vedic period downwards.

The third noteworthy action was a misfeasance summons taken out by the Liquidator of the Anglo-India Steam Navigation Co. Ltd. (in liquidation) against its directors, among whom were Sir Hukumchand and a son of Kajiji J., which, if I remember right, lasted for over thirty hearings. The whole law of a director's liability was thoroughly canvassed. As it involved intricacies of law, facts and accounts as well as heavy liability of directors like Sir Hukumchand and the judicial reputation of Kajiji J., who had permitted directors' meetings to be held in his Court chambers in his presence, it led to forensic fireworks on all sides.

All these cases were the result of the tremendous labours of some eminent solicitors, the like of whom a Court with a highly efficient dual system alone can produce. The age of hurried preparation of cases and quick disposals had not yet undermined their method of work.

There was, for instance, F. E. Dinshaw of Messrs. Payne & Co., a very formidable solicitor-cum-businessman, who handled his litigations like battalions with Napoleonic strategy. His preparation of a case left nothing to be desired. In his observations he could marshal facts and law as well as any senior could, but with marvellous brevity and lucidity. Once when an offer

of settlement was made to me by the opposing counsel, he as solicitor instructing me told me in his decisive way: "F. E. submits only to a decree against him passed by the Privy Council. I do not come to this court for (a) consent decree".

In point of preparation and strategy, nobody could beat Jamietram of Messrs. Matubhai Jamietram and Madan, who for many years presided over the little durbar of solicitors held every working day morning in the Bar Common Room. When he prepared a case, manipulated interlocutory proceedings or instructed counsel during trial, he fought his client's case with a rare tenacity and determination, bringing to bear upon it all the resources of his great astuteness.

The instructions and observations of Manchershaw Vakil of Messrs. Manchershaw and Narmadashankar, were always thorough, whatever the stake in the case. He marshalled the facts and discussed law with meticulous clarity, sometimes at great length. If you had a brief prepared by him, all that you had to do was to build your arguments on the foundation of his exhaustive research and presentation. Whatever little reputation I gained in Shivlal Motilal's and the Anglo-India Steam Navigation Co.'s cases was partly the result of his labours.

THE AGE OF SIR AMBERSON MARTEN (1926-30).

Before Sir Amberson came to the Bench in 1916, he was practising at the Chancery Bar in England. In my opinion, in spite of some limitations, he was the most erudite and judicially-minded Chief Justice of those who presided over the Court during the period I am dealing with.

When he came to the Bench in 1916, he was a stranger to India, and till the end he could never catch Indian names properly. For some time he found it difficult to grasp the intricacies

of Indian Law. Once in the beginning when a lawyer wanted to tell him about the various schools of Hindu Law, he, not knowing the oddities of that Law, did not understand how schools of law could have anything to do with the law he had to administer. He exclaimed : " I would not have so many schools of Hindu law in my Court ".

In the course of the protracted hearing of Chandabhoj Gulla's case (*Advocate-General of Bombay vs. Yusufalli Ebrahim, XXIV B.L.R., p. 1060*), he struggled heroically with Indian names and the ecclesiastical history of the Dawoodi Bohra community. In the end he summed up the case in one of the most remarkable judgments delivered in our court.

Marten J. had a great regard for environment. He would not begin work till the fans were in working order and the panels of doors opened at the proper angle. He insisted on correct professional manners. Once he was angry at an upcountry lawyer who began his address with his hands in his trouser pockets.

Marten J. would be upset if you did not state the facts of a case chronologically, or cited a case out of proper sequence or one not bearing on the point. He wanted method and he enjoyed nothing more than at the very outset counsel stating *seriatim* all the propositions which he wanted to establish. But once these extraneous requirements were fulfilled, he would settle down to hearing the case with a completely judicial attitude, following every legal point carefully, entering into discussion freely, and finally delivering judgments which often were models of clarity and balance.

He had a dislike for what he called ' witness actions '. He could rarely repress his horror if the Judge of the lower Court expressed himself in unhappy legal terminology. I remember how in an appeal, he was horrified when I read out from the judgment

of the trial Court the statement that the transaction on the basis of which the decree had been passed, was "more or less a concluded contract". "More or less?", he exclaimed. "Either there is or there is not a concluded contract".

During this period, the leadership of the Bar had materially altered. Sir Chimanlal appeared only in select cases and infrequently. Jinnah had drifted more and more to politics, very rarely conducting long cases. On reverting from the Bench, Kanga had been appointed Advocate-General, and in his unostentatious way, had emerged as the leader of the Bar. Bhulabhai, who had overshadowed all his colleagues in advocacy, was opening the gates of all-India practice for Bombay lawyers.

In 1930, Sir Amberson Marten retired. My relations with him were very friendly and I remember how when I got arrested for offering salt satyagraha and was sentenced to imprisonment, he was very much annoyed at the lapse of one of whom he, thought well.

Coltman had joined the Bar and acquired a large practice mainly due to his thoroughness, pugnacity and his refusal to be a party to settling cases. Among others, Taraporevala, Motilal Setalvad, Kania and Daphtary were most in demand, Amin and Bhagwati following close. Another counsel who distinguished himself for industry and thoroughness in this period was N. P. Engineer.

In 1927, I was elected member of the Bombay Legislative Council and had to give up practice for some months in the year.

On the Appellate Side, Govindlal Thakore, Shingne and Davatia were the leaders, Jayakar, of course, continuing to occupy a unique position.

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THE AGE OF SIR JOHN BEAUMONT (1930-43)

From its earliest days, the High Court Bar has always contributed its share to politics. Telang, Pherozshah Mehta and Gokuldas Parekh were, in their time, great names in politics. Sir Chimanlal, on whom fell the mantle of Sir Pherozshah in politics, was a liberal stalwart in the country throughout his active life.

Jinnah dominated Indian politics for a considerable time, and in 1915, under his leadership, quite a few of us, including Mangaldas Pakvasa and H. V. Divatia, actively worked for the Home Rule League.

In 1927, it was Chimanlal Setalvad who encouraged me to seek election to the Bombay Legislative Council, and after I resigned my seat in active support of the Bardoli Satyagraha of 1929, I eventually under the leadership of Gandhiji landed myself in jail in 1930, soon to be followed by Purshottam Trikamdas who was then doing very well for a junior.

In 1931, a notice was issued as to why disciplinary action should not be taken against me for joining the satyagraha. However, it was withdrawn as a result of the Gandhi-Irwin pact. In spite of this, I could resume steady practice only in 1934 on my release from jail after my two years' term of imprisonment.

With my joining the satyagraha movement in March 1930, my association with the High Court entered a different phase. Out of the thirty-one years which have since passed, I have left practice for different periods aggregating to 18 years, busy getting locked up in jail, occupying public offices, helping in Constitution-making or carrying on political activities. During the rest of the time, my professional activities alternating with spells of public work often took me away to different parts of the country. Naturally, therefore, my contact with the High Court became fitful and my impressions of it fragmentary.

In 1934, when I resumed practice, the complexion of the High Court had changed. Sir John Beaumont had been the Chief Justice for over three years. Among the new judges were B. J. Wadia, H. J. Kania, H. V. Divatia. Jamshedji Kanga continued to be the elder in the profession. Bhulabhai had drifted to politics. Coltman, Motilal Setalvad, Engineer, and Daphtary were the leaders of the Bar, with Amin and Bhagwati among the prominent seniors.

The new age had brought its own changes. The stenographer now dominated the Bench and the Bar. Judgments and pleadings had become prolix and unprecise. The Judges were not so unforgiving towards not-so-ready counsel. A new race of junior counsel and solicitors also came into being, who lacked the provocation to be as thorough as those who were brought up in the traditions of the earlier periods when litigation was leisurely and returns more remunerative in terms of the cost of living.

Sir John Beaumont was an extremely able judge, both of fact and law, combining despatch and balance. His grasp was quick, and his judgments, almost all dictated on the spot, were not only lucid but couched in happy language. He made on-the-spot judgments fashionable—a fashion which, when followed by less capable judges, was to raise a plentiful crop of prolix and rambling judgments, the despair of law reporters and the headache of the Bar.

On the Bench and outside, Beaumont J. was always courteous and pleasant. No practitioner in his Court felt the strain which was the inevitable lot of lawyers in the days of his predecessors. He was free from racial bias, though in later years the Civil Disobedience Movement developed in him an anti-Indian complex in matters political.

In the old days, the relations of the Chief Justice and the Governor were uniformly cordial, but those of the High Court

with the Home Department of the Government of Bombay were strained. As a result, the Chief Justice dealt with the Government only at the Governor's level and asserted his independence against the Home Department's attempt to encroach upon the power and authority of the High Court particularly over the judiciary in the State.

When in 1937 I assumed the Office of the Home Minister in the first Congress Ministry, the situation became complicated. We were pledged not to allow the Governor to interfere in the administration. Some of my colleagues thought that Beaumont had become the rallying centre of Congress mal-contents. This, however, was not true. As ministers with new-found power, we were anxious that every one should bow before us, and the High Court as an independent centre of influence was an eyesore to us. Naturally enough, those who were dissatisfied with the Congress Ministry, sought the protection of the High Court.

I decided to put an end to the continuing feud between the High Court and the Home Department. So I walked up to Beaumont's room, a strange thing for a Home Minister to do in view of the then existing relations, and secured a promise from him that all points of controversy thereafter should be settled between him and me by mutual discussion and not by official correspondence.

Some of my colleagues resented my arrangement with the Chief Justice. They wanted me to stand up to the High Court whatever that meant, and thought that my going to appease the Chief Justice had brought the prestige of the Government law. I retorted by saying that our greatest safeguard against public criticism would be to respect the independence of the High Court. It would be an evil day, I said, when High Court judges had to depend upon the goodwill of ministers.

Though our arrangement went on satisfactorily with regard to administrative problems, Beaumont, on occasions, could not help being unnecessarily critical of the Congress Government from the Bench.

I happened to be responsible for quelling one of the worst riots that threatened Bombay in 1938. They had become a recurring feature of the city's life, extracting a toll of scores of human lives every time. On this occasion, I had to warn some newspapers not to indulge in the pernicious practice of reporting murders community-wise. Three or four papers did not heed the warning, and I got the Chief Presidency Magistrate to issue an order under section 114 Cr. P. C. subjecting their reports about the riot to precensorship. This order, its purpose served, was withdrawn on the third or fourth day.

In spite of this, one newspaper went to the High Court in revision against the order which was no longer in force. In the course of the hearing the Chief Justice expressed a dislike of the Government in terms which I did not expect him to use from the Bench.

When I happened to meet Sir John a few days later, he triumphantly remarked : "Munshi, I have declared your order invalid". I could not help retorting : "If the riot breaks out again, I am going to issue a similar order if it is going to help. My duty is to restore order, your duty will come after order is restored, and if it is restored".

During those days, I had to undertake another delicate task which touched the High Court. Kenneth Kemp, a very conscientious lawyer and a friend of mine, was then the Advocate-General. However, I wanted Motilal Setalvad as Advocate-General to help me to deal with the constitutional questions which continually arose between our Ministry and the Governor, for

we were then pledged to work for a fully responsible government in the Province despite the provisions of the Government of India Act. I therefore met Kemp at his house and explained the situation. If he had hesitated, it would have meant a trial of strength between the Governor and the Ministry.

Few men in the position of Kemp would have taken my suggestion in such a friendly spirit. He saw the point I was making and agreed to submit his resignation, regardless of what the Governor or the Chief Justice might think about it. Neither of them, when they heard it, liked what I had done. With that began, Motilal Setalvad's career as an Advocate-General.

Talking about Motilal Setalvad, I cannot but refer to the great prestige which he has brought to our High Court Bar in Free India. For twenty-four years now, he had upheld the highest traditions of the Bar known to any part of the world. He declined knighthood. Rumour has it that he declined the offer of Chief Justiceship. He resigned office during the "Quit India" Movement.

His advocacy has remained unmatched; his sobriety of outlook unshaken. He has combined the different roles of the principal advisor of the Provincial and Central Governments with the responsibilities of a patriot and the independence of an upholder of the Rule of Law.

As Attorney-General of India since 1947, he has been in more respects than one an institution in himself.

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During the years from 1937 to 1946, two outstanding Judges of the Court were Broomfield J, who maintained the tradition of conscientiousness which characterised I.C.S. judges like Fawcett J. With his vast experience as a lawyer and his native shrewdness, Kania J. soon acquired the reputation of being, after Sir John Beaumont, the ablest Judge on the Bench.

It is very difficult for a Judge, who has been a practising lawyer, to retain openness of mind till the end of the case. However, Kania J., in spite of leaning towards expressing strong opinions in the course of the hearing of a suit, curiously for a judge of his calibre, developed the habit of never closing his mind to a new point of view, even if it was placed before him at the end. Whenever, about the time an argument was to close, he turned his face towards the sea and kept gazing at it for a minute or two, we knew that the portals of his mind had been opened for a judicial re-appraisal of a new point.

During 1937-39, there was strong differences of opinion between my colleagues and myself in the Congress Ministry about abolishing the Original Side. The legislature on which the District Bar is always amply represented, naturally finds it difficult to understand why the dual system to which they are aliens, should have a right to exist.

I was convinced and am convinced still, that the dual system is calculated to maintain higher standards of the Bench and the Bar than any other system, and is indispensable to large commercial cities like Bombay and Calcutta, Kher, the then Prime Minister of Bombay, was against it and wanted to me to scrap it. He even got Gandhiji to put pressure on me to do it.

When questions were asked in the Legislative Assembly as to when the dual system was going to be scrapped, words escaped my lips : " Every country gets the government it deserves. Similarly every people get the judicial system it deserves, and possibly we do not deserve the dual system ". A storm broke out in our inter-ministerial conference.

I stalled the movement as much as I could. The Chief Justice gave me the assistance of N. P. Engineer, then an Additional Judge, to show how the dual system was useful and even economic

in a commercial city like Bombay. We also suggested several reforms in the working of the system some of which were ultimately introduced.

What followed was an illustration of how the new race of politicians looked upon the administration of justice. The pressure to do away with the dual system was insistent. Whatever happened to the dual system, Kher, the Chief Minister, wanted that a City Civil Court should be brought into existence to take over a substantial part of the Original Side litigation. The Finance Minister, went on calculating what return would be received by applying the Court Fees Act to the Original Side, but would not spare funds for a new building for the proposed Court unless the High Court was prepared to reduce its expenses in a measure which would give an appropriate return on the investment. At one stage it was suggested that the shortest cut to achieve the object would be to invest the Small Causes Court with the powers of a City Civil Court :

I had a hard battle to fight. At one stage in the controversy, even my relations with some of my colleagues came to be strained. Any way, in these difficulties the only way to maintain close association between the Bench and the Bar of the new Court with those of the Original Side, and thereby to foster uniform standards of judicial efficiency and professional conduct, appeared to be to plant the City Civil Court near about the High Court premises. I tried to secure for the new building the intervening open space between the P.W.D. building and the High Court premises, but met with no success.

I had long discussions with the Chief Justice about the matter. We were both agreed that if the City Civil Court was to come, there should be the closest association between it and the High Court.

The only way left, therefore, was to build the new Court premises in the open space in the rear of the High Court building.

To satisfy the financial conscience of the Finance Minister, a case was made out that by building the new premises in the High Court compound, the Government would save the heavy rent that was being paid for the office of the Official Receiver. Such a building would also fetch a good return from the accommodation provided by way of counsel's chambers.

Some people objected to the site thus chosen. The Court premises, if constructed in the High Court compound, they contended, were likely to be ugly and stuffy. But the Chief Justice, I am glad, stuck to the decision. That is how the building of the new Court came to be constructed where it now stands.

By the time the new building was completed, however, the World War II came to be declared. The Congress ministry went out of office and the proposal to establish a City Civil Court was given up. The new building was then used for the Industrial Court, as well as for the office of the Official Receiver and for the chambers for counsel. After the World War II ended, Kher ministry came back to power and when the City Civil Court came into existence, it was housed in these premises.

After the Quit India movement, Beaumont C.J. was a different man. He had developed likes and dislikes even as a Judge. Relations between him and Kania J., became publicly strained for reasons I need not refer to here.

Sir John Beaumont retired on September 10, 1943, to be succeeded by an English lawyer, Sir Leonard Stone. Kania J., whose experience and attainments entitled him to the office, was superseded. He felt very sore. So did the Bar. But it was all to the good. In 1946, Kania was appointed a Judge of the Federal Court.

In course of time he became the first Chief Justice of the Supreme Court of India, an office which he not only filled with high distinction, but which enabled him to establish for the Supreme Court the undisputed position of an independent constitutional organ of the Union of India charged with the responsibility of safeguarding the Rules of Law and the fundamental freedoms of the people. I can never forget the ringing tones in which he pledged the Supreme Court to independence, when it was inaugurated in 1950.

* * * *

THE HIGH COURT IN THE POST-FREEDOM AGE.

After August 15, 1947, the High Court entered a new stage of its life as the State High Court woven into the pattern of integrated judiciary established by the Constitution with the Supreme Court at the apex. Chagla J. was appointed Acting Chief Justice in the place of Sir Leonard Stone, who went on leave preparatory to retirement.

My impressions of the High Court of the period after 1947 are scrappy and passing. Practically from the last quarter of 1946, to the second quarter of 1957, I was engaged in public activities or holding public offices. Since 1957, I have resisted the temptation of appearing in the High Court except on infrequent occasions. I would, therefore, prefer not to write about this period.

During this period, anyway, the Original Side was further truncated. The qualifying examination for Advocates (O. S.) was unnecessarily abolished, and the Original Side opened to all advocates. Constitutional and fiscal litigations grew in volume and importance, leading to specialisation among lawyers. With the raising of the pecuniary limit of the Original Side, the solicitors' profession lost its galmour and importance.

Since 1957, the old guard has drifted away. A new race of lawyers has come to the front. The Bar Library, no longer a roomy place, is now crowded with studious young lawyers.

I go to the Bar Library sometimes, meet the juniors of the old days who are now leading counsel, or gossip with enthusiastic youngsters anxious to make their way at the Bar. I love the world which it represents—a world in which I grew up and thrived, round which all my hopes and disappointments were centred for decades. Living in that world I made friends whose lives were woven with mine. Some of them, alas, are no more ; some have migrated to other courts or other spheres of life ; some are on the Bench in our or other High Courts ; many are still attached to me in a bond of brotherhood.

Whenever I go to the Bar Library or step into a court room, I feel like returning home. I am reminded of the battles fought and won in those court rooms, where justice was vindicated or smothered, where my personal life mingled with the life of one of the finest cities in India.

When I look back, I feel proud of the role played by the High Court during the last fifty years, particularly during the transitional period of our history and of the great tradition established by independent judges and fearless lawyers which forms the bulwark of freedom in this for the matter of that in any country.

If the Rule of Law is the very basis of genuine freedom, a strong Bench and Bar, independent and fearless, form the pivot round which it revolves. And with my fair share of knowledge of the trends in this country, I glory in the fact that even during sixteen years of ministerial rule, pledged to extend its power and influence over every sphere of life, the Bombay High Court has stood, and is accepted by the public as standing, as the proverbial ' temple of justice ', where judges stand away from extraneous influence and justice is dispensed without fear or favour.

REMINISCENCES OF Mr. D. J. FERREIRA

HERE I am at 93, not able to read except in a strong light and with the aid of spectacles, magnifiers and Maggi-c-bars dictating, at request, my reminiscences in regard to our High Court. I must say I regret that my reminiscences mostly concern myself but I cannot help this.

“*Tempora mutantur nos et mutamur in illis*” is a trite saying, but it embodies in itself the results of vast human experience and is true also in respect of the law and our High Court where the law is dispensed and administered.

In November 1886, when I had just passed the B.A. (the B.A. was at that time a course of 3 years after the Matriculation Examination), I went to consult Mr. Telang who was then at the Bar, as to what course I should take up. I had met Mr. Telang before in the garden then known as the Prince of Wales Garden, to the west of Charni Road Station, which garden still exists, but greatly encroached upon by Government buildings. As we were talking, a bearer brought in two children—if I remember the number aright. Mr. Telang just patted them on the head and cheeks and motioned to the bearer to take them away. “You see”, Mr. Telang said to me, “this is all I can see of the children. At night when I come home, they are asleep, and in the morning I have no time for them. This is what you must be prepared for if you wish to become a lawyer.”

In spite of this discouraging approach, I made up my mind to go in for law and for this I had to pass the LL.B. Examination.

The course was then a course of two years. We had to attend lectures given in the University Library. The first was the Jurisprudence examination, the second was the LL.B. Mr. Telang was the lecturer in Equity and Hindu Law. His lectures were very interesting. Mr. Webb was the lecturer on Contracts and other subjects. His lectures were not interesting, with the result that during his lectures more "presents" were recorded than students actually present, and at the end of the lectures most of the students who had been present had skeddaddled out of the lecture-room, and only a few, usually about five or so, were present at the end of the lectures, when there should have been about forty, the number enrolled for the lectures.

Early in 1889 my father and I went to the office of Messrs. Little, Smith, Frere and Nicholson, the Solicitors to Government, as it had been arranged that I had to sign Articles with Mr. Little, the Government Solicitor. When we went up to the office, Mr. Little was engaged, with the result that we had to wait in a room next to Mr. Little's, where K. R. Daphtary (father of the present Solicitor-General) who was then an articled clerk was seated. He was a most affable person. Little did I then dream that this gentleman and I would start our careers in a partnership that now continues to exist in the name of Daphtary, Ferreira and Divan. He entered into conversation with us. I told him who I was and what I had come for, and in the course of conversation he asked what I was going to be paid every month. I told him that I was not being paid anything. He said that he was being paid Rs. 50 per month and that he was merely a B.A. As I was an LL.B. and therefore had only two years' Articles, I ought to be paid something more. So when we went into Mr. Little's room, before I signed the Articles, I stated to Mr. Little that I hoped I was going to be paid something every month. He said "What for?" I replied that

I did not wish to go to my father to keep me in socks and shoes. I said I was an LL.B. and might be of help to him. He smiled. He had a brief in his hand and said "For instance, what do you know of Mohamedan Law?" I was bold enough to reply that I knew a great deal. We had a little book by Sada Gopal Charloo which treated of increases and returns. Mr. Little opening the brief, read some facts out to me and asked me what the shares of the parties would be on an intestacy. I boldly replied that that was not a question of law but of arithmetic, and that if he gave me pencil and paper I would give him the shares. He gave me a pencil and paper, I worked out the figures and gave him the answers. He said he thought I was right. I became bolder and said that it was not a case of thinking, I was sure of it. He offered to pay me Rs. 50 a month. I asked him to make it Rs. 100 and he agreed to pay me Rs. 75.

In 1889, when, as an articled clerk, I had to go to the High Court, the High Court building was on large grounds, open on either side. There were no motors then but victorias, their horses with sun tops, phaetons, dog carts and some palanquins and later trams drawn by Australian horses. Two solicitors' firms, Messrs. Craigie, Lynch and Owen, and Messrs. Little, Smith, Frere and Nicholson had palanquins, in which the partners came up to the High Court from their offices. I, too, had a ride in a palanquin, now and again, from Medows Street to the High Court through the courtesy of Mr. Little to whom I was articled. The entrance through the compound in the west was for the judges and dignitaries of the Court whilst the entrances to the east were for the solicitors, the litigants and others who had to come to Court. On the northern side of the grounds there was a small passage through which, and also through a wicket at the western end, all of us went to the Churchgate Station and the sea beyond. There were no under-

ground passages then, and there was no need for undergrounds, as the traffic was comparatively small.

Churchgate Station was not then the terminus of the B.B. and C.I. Railway (Western Railway) as it now is. That railway had its terminus at Colaba. The Churchgate Station was so called because those who had to go to Church, i.e. St. Thomas's Cathedral, had to alight there and go through Churchgate Street.

To-day, the ground to the east of the High Court is crammed with other buildings, the coffee room, the Civil Court buildings, garages and what not, with the result that the grandeur and the dignity of the High Court is in a great measure lost.

We had learned and efficient judges in Bombay. Such was the very high sense of duty that impelled them that one of the Chief Justices threatened to close the Bombay High Court because the Governor, or his aide, spoke to one of the judges regarding a case in which the aide was involved. So deep was the concern of the judges to avoid outside influences, that some of them went for their walks only after dusk, when no one could recognise them.

In 1896, when Bombay was attacked by that scourge, which Dr. Accacio Viegas discovered to be Bubonic Plague, the Government of Bombay appointed a committee with Gen. Gatacre as its head to combat the disease. Influential men in the city joined the committee, among them was Mr. Justice Fulton. He took me along with him to help him with Marathi. We went into the lanes in Khotachiwadi where I lived, Kandawadi and Kelawadi, all in Girgaum. We ferreted out the patients and made arrangements to take them to the hospital designated for the purpose. In after years, when the plague visited us, we fled from our homes to live in huts and tents erected on the Chowpatty sands. Thank God, the plague was completely stamped out in Bombay.

What a galaxy of counsel and an array of legal talent we had during the early part of this century ! Latham, Pherozeshah Mehta, Macpherson, Branson, Inverarity, Chimanlal Setalvad, Davar, Jardine, Lowndes, Raikes, Coltman, Strangman, Jinnah, Joseph Baptista, Bhulabhai Desai and many others. Jamsetji Kanga, Engineer and Munshi are still with us.

Pherozeshah Mehta did not apparently care to practise in our Courts. He was great at preparing petitions for the Chiefs of States and greater still as a Councillor in the Municipal Corporation for the City of Bombay. He became so powerful there, that no Councillor dared to oppose him. In 1895 or thereabouts a caucus was formed with the avowed object of keeping Pherozeshah Mehta out of the councillorship. Both Inverarity and Lowndes addressed the meeting at which the councillors were to be elected. I had joined the caucus. The object of the caucus was to show Pherozeshah that he was not indispensable. The caucus succeeded, but on the resignation of a councillor Pherozeshah came in again.

Apart from being one of our greatest cross-examiners, Inverarity was a big game-hunter, and was keen on bridge and chess. On his voyages from and to Europe, it is said, he won enough to pay his passage. On his returns to India, special retainers by post and telegraph were received by him at Port Said and Aden. Further retainers were presented to him as he stepped off the gangway. Arriving at his chambers in the High Court he dated the retainers. Before attending to any other professional work, he pored over a huge detailed map to study the best route to some forest where he could enjoy his favourite past-time, with the result that before he appeared in Court he had often been out for a shoot. He had more tigers to his credit than many a shikari. Once he was so badly mauled, that he, the tiger of the

courts, was almost wholly finished by a tiger of the jungles. I had the honour of being called "kaka" by him right up to the end, and this because his devil C. K. Daphtary used to call me "kaka", while C. K. himself was "nepos" to him. Inverarity made no notes. In the Crawford Commission, it is said, Latham who was appearing for the prosecution, had 4 books of notes, whilst Inverarity who appeared for the defence had no notes at all, and oftentimes it was found that Inverarity was right and Latham wrong in his statement of facts.

On one occasion Inverarity came up into the library pulling at his giant meerschaum (or calabash). Finding that Bhulabhai Desai had made copious notes and was making further notes, Inverarity went up to him, took hold of the notes and destroyed them saying, "Young man, these notes must be in your nut and not on paper."

And again, there were different kinds of advocacy and varieties of speech. Macpherson in his sonorous and rounded speech and his phrases such as "philandering of forlorn counsel or filibuster of my irate opponent" and "the concomitants and idiosyncracies of age", at times put the judge to sleep, while Inverarity, who avoided all terms which had any Greek or Latin origin and delighted in pure Anglo-Saxon phraseology, forced the judges to be all attention. On one occasion one of our Judges, I believe it was Mr. Justice Marten, was shocked with the answer that counsel gave to him in reply to his query: "Was it a common law or a Statute made corporation?" "I must confess, my Lord, that I have never heard of a Statute made corporation or a common law corporation". The Judge threw himself back on his chair and nearly fell off his seat. On another occasion, when Lowndes who was appearing in the High Court in a confirmation case for a Catholic priest who had been sentenced to death by the Sessions

Judge at Thana, addressed their Lordships Messrs. Justice Chandavarkar and Bachelor with the opening : " My Lords, my first regret in this case is that there was no Christian on the jury who could understand the value of an oath ". Mr. Justice Chandavarkar in a temper said " What do you mean Mr. Lowndes? Do you suggest that only a Christian can understand the value of an oath? " I began to shiver and begged Mr. Lowndes not to rub the Judge the wrong way. Mr. Lowndes, whispering to me to leave the matter in his hands, went on to say " My Lords, I repeat that my first regret in this case is, that there was no Christian on the jury who could understand the value of an oath taken by a priest when he is consecrated a priest of the Church. " " Oh! Oh! is that what you mean ", said the Judge. Mr. Lowndes ultimately ensured the acquittal of the priest.

Branson who was very good in criminal cases was instructed by me in a case. I did not then know that Branson had to drug himself with medicines every morning. On the day the case came on I went over to his room to remind him and found that he seemed to be drunk. I got alarmed and came up to the Court preparing to apply for an adjournment, when Branson, just before the case was called on, came up. My heart sank as he seemed to be still staggering, but to my great surprise, when the case was called on, he rose and addressed the Court so well that we were successful.

I believe that Mahatma Gandhi, the Father of the Nation, did not practise in our Courts in Bombay. He was very friendly with my partner K. R. Daphtary as they had many common interests. On occasions when in our tiffin room, he ate only a few ground-nuts from a cloth bag on his shoulder and took a small glass of milk.

When B. G. Kher was made Chief Minister of Bombay, the members of the Bombay Incorporated Law Society invited

him to a party. As President of the Society I spoke on that occasion and at the end of a long speech, in a playful mood I added "It is not proper for us to call a great man to a party and then ask him for a favour, but I, an old man, do pray that you will allow us a glass of beer or a peg of whisky now and again". Kher in reply spoke for more than half an hour on prohibition and the success of prohibition, forgetting all that I had said about our Society and the occasion that brought us together.

An incident, not in the High Court, but in a District Court, is worth recording. I had been developing an argument and felt elated that the judge was taking full notes. I was about to resume my seat, when the judge looking up, called out "Pattawalla! Take this to the Burrah Sahib", and handed him a note which apparently he had been writing whilst I had been addressing him. Turning to me the judge said: "Mr. Ferreira, you were telling me....." repeating what I had said half an hour before. My opponent, Mr. Coyajee, smiling at me whispered "I defy you to reproduce your argument".

Hirajee Kolah of Merwanji Kolah & Co., was one of our greatest conveyancers. More entails must have been cut off by him than any other conveyancer in Bombay. To-day there are no entails.

F. E. Dinshaw, better known as F. E., of Payne & Co., apart from his proficiency in the profession had vast and varied interests. With a heart of gold he helped any and everybody in trouble. Riding was a hobby and a necessity. Almost every morning found him on the Juhu beach riding one horse after another, tiring them out. It is said a consignment of ties from Paris came to him every week and that he hardly ever wore the same tie twice. As a Director of many companies, his was the controlling and guiding mind.

N. H. Moos, a well-known Solicitor, was great as a High Court Receiver, in which position he brought in large revenues to the Government. At Land's End, Bandra, he lived in a villa built and furnished in Italian style. Inverarity, when he was not very well but still attending Court, stayed in that house of Nannie Moos for about a month, it being my part to escort him every evening from his rooms right up to Bandra. Moos's villa is now Fr. Agnel's Ashram.

Of the living I say nothing.

De mortuis nil nisi bonum.

In a recent trial it was difficult for members of the profession to get to the High Court because of the crowds that thronged the Court premises, but these crowds were nothing compared to the great crowds that were to be seen in the High Court, in the grounds, and the roads leading to the High Court in the trial of Bal Gangadhar Tilak in 1910.

Many are the changes that have come about! Counsels' chambers were open upto 7-30 or 8 at night but it is not so to-day. Gone are the wigs that judges wore. Gone also are the portly punkas with their long tassels and ropes which the punka boys, like the lazy nurse who snored the sick man dead, going to sleep did not pull, forgetting or not knowing, that the administration of justice was hampered for want of air.

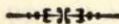
We wonder now, how without the lifts we got to the second floor, sometimes going up and down three or four times a day when our cases were being heard.

Never to return are the days when a judge treated the Indian practitioners with contempt. On one occasion, when Chimanlal Setalvad was arguing, a judge said to him : " You do not understand English ". Chimanlal's retort to this was quick : " I understand English as well as Your Lordship. What I fail to understand is

that Your Lordship cannot grasp the point I am making." The days of racial prejudice have gone.

These are only a few of the reminiscences of one who has practised as a Solicitor and has been up and down the steps of his office in Meadows Street and the Bombay High Court for sixty-four years from 1892-1956.

In these more than three score years the Bombay High Court has maintained the dignity and justice of the Law, has continued an honourable tradition which, I hope, will remain in the years to come.



REMINISCENCES OF Mr. J. R. DHURANDHAR

M*Y* association with the High Court of Bombay (now High Court of Maharashtra) can mainly be divided into three stages :

- (i) *in my capacity as an Advocate practising in the High Court ;*
- (ii) *as a Member of the Bombay Judicial Service ;*
and
- (iii) *as the Legal Remembrancer and Draftsman in the Legal Department of the Government of Bombay*

I took up the Law Degree in 1908 and was enrolled as an Advocate on the appellate side of the High Court in 1908. Sometime after, I was asked by Shri G. S. Rao (afterwards Dewan-Bahadur Rao) to read in his Chambers. His advice to me was to study and master first the facts of each case, to note them in a chronological order. According to him the chronological order was the logical order. He warned me not to exaggerate or mistate any fact. So far as legal questions were concerned, he asked me always to reduce them to and to test them by fundamental principles. During my stay with Shri Rao he acted as the Government Pleader, High Court, and also acted as a Judge. My work was to study carefully and work up his briefs and then to watch them in courts when he argued. He had taken his M.A. Degree in English and Latin and before he took to the

legal profession, he was a Head Master of a well known High School. He also acted as a Professor at the Government Law College. His arguments were well known for their lucidity; use of chaste English and above all his uniform courtesy towards the Court. He was considered to be an expert in Hindu Law. But one trait of his character as a Prosecutor on behalf of Government, which struck me, was his fairness to the accused. He never hesitated to state frankly before the Court that he was not able to support the conviction of the accused. What was said about Rao Bahadur Kirtikar, one of his predecessors in the office of the Government Pleader, High Court, that he was pink of courtesy and acme of honour, applied to Shri Rao to the utmost degree. Regarding his fairness as a Prosecutor, I may quote an instance. He was appointed by Government as a Special Public Prosecutor to conduct a bribery case in Panchmahals. The accused was a Chitnis to the Collector and was accused of receiving a bribe for the issue of a mining licence. The case went on for 3 or 4 months. Accused's defence was, apart from his denial that any money was received by him, that the final order of the issue of the licence was passed by the Collector himself. The Collector was an Englishman and an I.C.S. Officer. Those who were instructing Shri Rao did not want to involve the Collector and were dead against examining him as a witness. They also urged that if the Collector was cited and examined as a witness he would not be able to deny his signatures to the orders passed and the whole prosecution would fail and the accused would go scot free. Shri Rao disagreed with these views, took the whole responsibility upon himself and cited the Collector as a witness and gave the accused the fullest opportunity to prove his defence. The result, however, was that the trying Magistrate, the Sessions Judge in appeal, as well as the High Court in revision held that

inspite of the full opportunity given to the accused to prove his case, the charge against him was proved. So far as his legal acumen and soundness in law, I would like to cite one case only, though it would be possible to cite many. That case is the Kolaba Khoti Case. (*The Secretary of States for India vs. Sadashiv Abaji Bhat, I.L.R., 36 : Bom. 290 ; 12 Bom. L.R. 77*). Disputes were going on between Government and Khots regarding the rights of Khots vis-a-vis their tenants. These disputes led to agrarian riots in the District of Ratnagiri and led to the passing of the Khoti Settlement Act of 1886. That Act was applied to the District of Ratnagiri and inspite of a provision therein for its application to the District of Kolaba, it was realised that such application would not be in the interest of cultivating tenants. Khots used to pass annual Kabulayats. The important clause in the Kabulayat was in relation to the demands which the Khots could make against the tenants for the recovery of dues. Before 1865, Khots used to recover one-half of the crop-share from tenants, leaving them to bear the entire expenses of cultivation. By sections 37 and 38 of the Survey Settlement Act, 1865, Government fixed the rates and guaranteed them to Khots for a period of 27 years which expired in 1892. After the expiry of that period, Government asked the Khots to pass Kabulayats in which the amount of rates so sanctioned was continued. The Khots refused and their plea was that the period of the guarantee being over, they were entitled to recover one half of the crop-share as before. The Khots filed suits, about 80 in number, in 1893 in the District Court of Thana. The suits went on for 12 years. The evidence tendered on both sides consisted of documents from the records of Peshvas and early British regime. The District Judge Shri Tipnis took about six months to write his judgment. The result was that it broke his health and

soon after the decision, he died. Appeals were filed in the Bombay High Court. They came up for hearing in 1911. It was expected that the appeals would take up about a month or three weeks. A Special Bench of Beaman and Hayward JJ. was constituted to hear the appeals. Shri Rao was in charge of the appeals as Government Pleader and he instructed the Advocate General Sir, Thomas Strangman. After discussion between them, they raised a preliminary point to the effect that on the wording of sections 37 and 38 of the Survey Settlement Act, although the guaranteed period expired, the sanctioned rates continued and it was not open to the Khots to contend that they could recover dues at the old existing rate of half crop-share. The contention was accepted by the High Court and about 100 appeals, expected to last for a month or three weeks, were dismissed in two hours. So far as the first stage of my association with the High Court, I do not desire to encumber this article by reference to several other cases.

The second stage relates to the periods during which I acted as a Judge. These periods were intermittent and were not of much large duration. I can, therefore, relate only one or two cases which could be said to give rise to some noteworthy incidents. In the early days of 1914 to 1915 I was acting as a Subordinate Judge of Haveli Taluka in Poona District. The cases were mostly under the Deccan Agriculturists Relief Act, 1879. In one case an old woman who was growing vegetables in a place nearby Poona brought a suit to recover about Rs. 500 to Rs. 600 as the price of vegetables from a wholesale merchant in the Reay Market at Poona. Her case was that she had dealings with the Defendant for a number of years. She used to grow vegetables on her land and bring them to the Defendant for sale. The Defendant used to pay her some money every

month. Every year the accounts were settled and she used to receive the balance. For the year in dispute the Defendant refused to pay her anything and hence her suit. According to her estimate, the Defendant owed her about Rs. 500 to 600, but she prayed for accounts to be taken. She had no documents to prove her claim and as regards oral evidence, she relied upon her own word. The Defendant flatly denied her claim and went to the length of stating that he had no dealings with the plaintiff. In such cases, it was my practice to examine the parties as required by the Circulars of the High Court. The Plaintiff repeated her story set out in the plaint. When it came to the examination of the Defendant, he also repeated the story set out in his written statement. I put to him several questions. He flatly denied any dealings with the Plaintiff. In support of his averments he agreed to produce his accounts. But during his examination one peculiar circumstance came to my notice. Every time he answered a question he used to take his right hand to his neck and used to hold or touch something. I asked him whether he was suffering from anything and what was there in the region of his neck. He answered that he was wearing a neckless of Tulsi beads as he belonged to the 'Warkari Panth'. I then asked him what were the tenets of that Panth. He answered that main tenets were three or four ; one was to wear the Tulsi bead necklace, the second was to observe the Ekadashi fast, the third was to visit Pandharpur, the fourth was not to eat flesh or fish and the last was always to tell the truth. I, therefore, asked him to hold the Tulsi-necklace, which he was wearing, in his right hand and to tell me whether he had dealings with the Plaintiff and whether any money was due to her. He practically collapsed, asked to be forgiven for all the lies he had told, admitted the claim of the Plaintiff and agreed to pay her full sum with interest.

Another case of some note which I remember was one tried by me as the Sessions Judge at Poona. It was a case in which three accused were charged with the murder of two women, one being the wife of one of the accused and the other his mother-in-law. The accused was the third husband of the woman, her two former husbands being dead, and she had acquired the property left by them. The said property consisted of lands and ornaments. The double murder was said to have been committed in a village about 2 years before the case came up for trial. The principal accused who was the husband of one of the woman and the son-in-law of the other was said to be a rich gardener. The offence was said to have come to light when the accused got drunk, stood in the market place in the village and boasted that though he had committed two murders, nobody had dared to arrest him. The said information was reduced to writing by a Policeman who made a report to the higher authorities. The investigation was made and two skeletons stated to be of the two women were extorted from a ditch in an isolated place near a village in the interior. The case was committed to the Sessions and was tried by me with the assistance of a Special Jury of 9 persons. The accused was defended by a lawyer who was said to have large practice in criminal matters. The evidence consisted of a so called approver and circumstantial evidence regarding the conduct of the accused. The accused did not lead any evidence. The defence was that corpus delicti was not proved. The evidence regarding skeletons being the skeletons of the two women was not said to be satisfactory. When questioned about the fact whether the two women were alive or dead, it was stated that one woman died at Banaras and the other at Nasik. But no death certificates were produced. The skeletons were proved to be of two females. Only evidence of identification was that

on one skeleton there was a gold ornament which had a peculiar mark well known in the village. Some scraps of saris used to be worn by the two women, were also identified. It was strongly pleaded that the two skeletons were of two bodies of some Mahars who had the practice of burying their dead. With reference to the said plea, I asked the defence lawyer to explain how the two skeletons were found in one grave, if the said skeletons were the result of natural burial. He was unable to explain this circumstance. When all the evidence was over, the time came for the examination of the accused. It was my practice to note down each circumstance which was alleged by the prosecution as indicating the guilt of the accused or from which such guilt could be inferred. So far as the principal accused was concerned, I put to him nearly 40 questions relating each of such circumstance. His uniform reply was ' I do not know anything, ask my lawyer '. It came to my notice that during 10 days on which the trial continued the accused was sitting with his face hung down and did not face me or the jury. After my summing, up was over, the jury retired and returned with the unanimous verdict of guilty against the principal accused on the charge of murder. I accepted the verdict, passed a sentence of death against the principal accused and sent the case for confirmation to the High Court. In the High Court, the accused were defended by a well known Counsel. The sentence of death on the principal accused was confirmed. Some months after the trial was over, I happened to meet the foreman of the Jury at some function. We started talking about the case. I asked him what weighed with the Jury in returning a unanimous verdict of guilty against the principal accused. He stated that they were convinced about the guilt of the accused on two grounds : (1) my question to the Defence Counsel about the two skeletons being found in one ditch ; and

(2) *the accused's replies to my 40 questions that he did not know anything and that his lawyer would explain. Although so far as the State of Bombay is concerned, the Jury system is abolished, the case illustrates how a layman decides a matter from the common sense point of view.*

The third stage during my career with respect to my association with the High Court starts with the year 1926 when I was deputed to the Government of India for being trained as a Legislative Draftsman. That was the first occasion when a person from the Provincial Service was selected for such training. Mr. Percival who was then Secretary, Legal Department and Remembrancer of Legal Affairs, warned me at the outset that if I agreed to be sent for such training, I would have to keep aside all my ambitions in other spheres of my judicial career. He said that once a mortgage, always a mortgage, and once a draftsman I shall have to end my career as a draftsman. Those words of Mr. Percival were prophetically correct, and had proved true and I must admit that I have no regrets in the matter. During my training as a draftsman, I was entrusted with the work of the amendment of the Transfer of Property Act, 1882. The first draft of the said Act was prepared by the First Law Commission which had assisted Lord Macaulay in drafting the Indian Penal Code. It was then again scrutinised by the Second Law Commission consisting of Sir Charles Turner, Chief Justice of Madras, Sir Raymond West of the Bombay High Court and Sir Whitley Stokes. The said Act was based on the English Conveyancing and Property Act of 1881. Since then Lord Birkenhead undertook the revision of that Act and the English Property Act of 1926 was passed. So far as the Indian Act was concerned, several Law Members of the Government of India including Sir William Vincent (who was also Judge of the

Calcutta High Court) and Sir Tej Bahadur Sapru undertook its revision. Shri Lal Gopal Mukerji who acted for some time as the Chief Justice of the Allahabad High Court was appointed by the Government of India to report on the revision of the Transfer of Property Act. When I went on deputation to the Government of India, all that material was placed before me and I was directed to formulate my proposals and to discuss them with the then Law Member Shri S. R. Das. The discussions went on for six months. W. T. M. Wright, the draftsman of the Government of India, assisted us. I completed my report with draft amendments. Since the passing of the Act in 1882 a large number of decisions, several of which were conflicting and inconsistent had been recorded. The task was difficult but interesting. Shri Das told me that I should bear in mind one thing. There should be utmost respect for High Courts as institutions, but not to that extent for all judges and for all their judgments. He told me to test my proposals in relation with the fundamental principles of Common Law and Equity Jurisprudence. My report, with draft amendments, was placed before an Expert Committee consisting of Shri S. R. Das as the Chairman and the other Members being Sir Dinshah Mulla, Sir B. L. Mitter, then Advocate General of Bengal and Dr. S. N. Sen, who was the Judge of the Allahabad High Court. The Committee sat about three or four months and submitted its report to the Government of India. I had to act as the Secretary to the Committee. The Bill proposed by the Expert Committee was introduced in the Legislative Assembly in 1928 and became law in 1929. Amendments to several Acts such as Order XXXIV of the Civil Procedure Code, Indian Evidence Act, Limitation Act, Specific Relief Act were included into a supplementary Act. Except some formal and verbal amendments made by reason of the change in the Constitution, the Amending

Act of 1929 has stood the test of time for the last 32 years without any material change. I also acted as Secretary to the Expert Committee appointed to revise the Sale of Goods Law. The Expert Committee on the Sale of Goods Act consisted of B. L. Mitter, Shri Alladi Krishnaswamy Aiyanger, Sir Dinshah Mulla. Revision of the Law of Partnership was also entrusted to me.

After my return from the Government of India, I was suddenly transferred to the Legal Department from my post as District Judge, Poona, to undertake the drafting. The Government of India Act of 1919 was the Constitution Act then and although there was a distinction between the reserved and transferred subjects, with the proper sanction any legislation could be undertaken for the peace and good order of the country. There was no clear cut division between the Central and State subjects, nor were there fetters or restrictions on the power of the Legislature as there are at present. With all the facilities the draftsman had under the Government of India Act, 1919, several problems were intricate and baffling. Some of such problems came before me from 1932 to 1935 in drafting such enactments as the Improvement Trust Amalgamation Act and Village Panchayat Act of 1932. From 1934 to 1937 I had to draft the Adaptation Orders to Bombay Acts. The draft was prepared under the guidance of Shri B. N. Rao at Delhi and was finally approved by Sir Maurice Gwyer in England. The orders were promulgated by the British Parliament by an Order-in-Council. In 1937 the Congress Ministry took office in Bombay and during the space of 2 years when it was in office several legislative measures were undertaken. The important amongst them were the Bombay Tenancy Act, the Bombay Agricultural Debtors Relief Act, the Bombay Industrial Disputes Act, the Bombay Urban Immovable

Property Tax Act. The discussion on the Industrial Disputes Act occupied not less than three months. The Bombay Urban Immovable Property Tax Act became the subject matter of the first Constitutional dispute. Two suits were filed before the Bombay High Court challenging the validity of the Act. The suits were heard by a Special Bench consisting of three Judges. All leading Counsel appeared in the cases on behalf of one party or the other. Before these suits came up for hearing, the only decision of the Highest Tribunal, that is, of either Federal Court or the Privy Council was : C. P. Motor Spirit Taxation Act, 1939 (1939) 1 F.C.R. 1. The decision of the Federal Court consists of three Judgments of Sir Maurice Gwyer C. J., Suleman J. and Jayakar J. But with due respect to the other two Judges, the Judgment of the Chief Justice is classic and lays down the principles to be followed in construing apparently conflicting entries in the Legislative Lists. The arguments before the Bombay High Court in the Urban Immovable Property Tax Act case were by Sir Jamshedji Kanga on behalf of the plaintiffs and Shri Motilal Setalwad as Advocate General on behalf of Government. The arguments on both sides were notable for learning and advocacy and would be long remembered by those who had the opportunity of hearing them. Both the suits were dismissed and the validity of the Act was upheld. The other notable cases were the two Prohibition cases which were decided by the Bombay High Court in 1940. I shall refer to these cases later.

In 1939 the Congress Ministry resigned and the Administration was taken over by the Governor. I left the Legal Department in 1941 and was recalled in 1948. In 1948 most of the Indian States were merged with the Dominion of India. Their Rulers were pensioned off, their debts assessed and whatever was left in their treasuries was taken over by the Government of the

Provinces in which the States were merged. By the merger agreements the Rulers were allowed to retain their personal properties. When the British Government relinquished their suzerainty over Indian States it was expected that there would be disorders and disturbances and it would be impossible for the Indian to solve the problem of States. Several British Officers highly placed, toured the States, expressed their willingness to come back if their assistance was needed. The American writer Vincent Sheean writes :

“ It had not been foreseen, indeed many wise and great men including Winston Churchill had long declared the problem of the sovereign princes to be an impenetrable obstacle to India Union.... ”

and further he adds :

“ That Patel brought this off within about a year without public disorder or rebellion in the greater part of princely India was dazzling achievement.”

Through the sagacity of Sardar Vallabhbhai Patel the stupendous task was achieved without firing a shot or without any disturbance. Most of the said States had no laws and not even proper Courts. The work of integrating their subjects and vast areas comprising the States remained to be done. In order to facilitate this, the Dominion Legislature passed an Act called the Extra Provincial Jurisdiction Act, 1947, and under the provisions thereof delegated to the Provincial Governments power to issue Orders for the administration and application of Laws to those areas. So far as the Province of Bombay was concerned, in addition to the bigger States of Baroda and Kolhapur, Deccan States 16 in number and Gujarat States 35 in number were merged in the Province of Bombay. My task was to frame Orders under the delegated jurisdiction under the Extra Provincial Jurisdiction

Act, 1947. Orders in two sets were issued : (1) Administration of States Order and (2) Application of Laws Order. Orders were published in Bombay Rules and Orders under Central Acts, Vol. II. The said orders have been before Courts on some occasions. But although they are of complicated nature and include several matters of intricate nature, no substantial difficulties arose in their enforcement, nor have the courts had any occasion to hold that they were illegal or ultra vires.

When I rejoined the Legal Department of the Government of Bombay in 1948, I found that applications for the issue of prerogative writs against Government were galore. They were mainly against the orders issued for preventive detention and those under the Bombay Land Requisition Act, 1948. The Defence of India Act and the Rules under which action used to be taken against the person and property had come to an end. The Central Legislature had not passed the Preventive Detention Act nor the Constitution had come into force authorising requisition of property for a public purpose. The Bombay High Court had held that even under the Defence of India Act and the Rules, requisition of immovable property was illegal. To legalise the action taken in several cases, the Government of India Act, 1935, was amended and power was given to both the Central and Provincial Governments to requisition premises. It is no doubt true that in enforcing these provisions which were of drastic nature, several mistakes occurred.

From 1948 to 1956 I was in charge of the drafting of legislative measures of the Government of Bombay. Important pieces of legislation which were undertaken during that period were :

- (1) The Bombay Prohibition Act,*
- (2) The Bombay City Civil Court Act,*
- (3) The Bombay Tenancy and Agricultural Lands Act,*

- (4) *The Bombay Land Tenures Act,*
- (5) *The Bombay Sales Tax Act,*
- (6) *The Bombay Prize Competition and Lotteries Act.*

Prohibition had an interesting but chequered history. One of the resolutions passed by the Indian National Congress at its first Session in 1885 was the prohibition of the use of intoxicating liquors and drugs. That was one of the policies on which the Congress Party won its election in 1937. It was but natural, therefore, that the party when it came in power should take steps to carry out that policy. There was a strong opposition to the said policy. Several persons who were carrying on liquor trade were to be scrapped. The loss of the excise revenue was then to be met by enacting several measures, such as the Urban Immovable Property Tax Act. As stated before, the validity of the said Act was challenged by Sir Byramji Jeejibhoy who owned a large area having toddy trees and who would be hit by the prohibition policy. The important cases relating to Prohibition which went to the High Court, Federal Court and Supreme Court were :

- (1) *Emperor vs. Chinubhai Lalbhai :*
I.L.R. (1940) Bom. 587 ; 42 Bom. L. R. 669 ;
- (2) *Emperor vs. Saver Manuel Dantes,*
I.L.R. (1940) Bom. 771 ; 42 Bom. L. R. 791 ;
- (3) *Emperor vs. Kishori Shetty : 52 Bom. L. R. 29 ;*
- (4) *Bhola Prasad vs. King Emp. (1942) F.C.R. 17 ;*
- (5) *Kishori Shetti vs. King : 52 Bom. L. R. 591 ;*
- (6) *Fram Nusserwanji Balsara vs. State of Bombay ;*
52 Bom. L.R. 799 ;
- (7) *F. N. Balsara vs. State of Bombay : 53 Bom.L.R. 982;*
- (8) *Behram Khurshed Pesikaka vs. The State of Bombay*
(1955) I. S. C. R. 613; A. I. R. 1955 S. C. 123.

The first four cases were under the Bombay Abkari Act, 1878. In the first two cases, it was held that the Bombay Abkari Act was essentially a revenue measure and could not be used for carrying out the programme of prohibition which was a piece of social reform. But that view was upset by the High Court itself in Kishori's case which was affirmed by the Federal Court in cases Nos. 4 and 5. One ground on which the view of the High Court was based in the second case was that the power vested in the Provincial Government to legislate for intoxicating liquor could not be used if the exercise of such powers would conflict with the Central Government's powers to allow imports and to levy custom duties. The theory that both the Central as well as the Provincial Government could exercise powers which were of plenary nature, was not well recognised in 1940. The later decisions of the Federal as well as the Supreme Court have fully established that theory and the second decision of the High Court in so far as it was based on the above view is no longer good law. In Bhola Prasad's Case No. 4 above, the Federal Court decided that the view taken by the Bombay High Court was not correct and also laid down that the Excise or Abkari Act, enacted in India from the earliest time by the British were wide enough to warrant the enforcement of prohibition. It may be noted that Case No. 1 was decided by 5 Judges of the Bombay High Court and Case No. 2 by 4 Judges. The principles of reconciliation of three legislative lists and the autonomy of States under List II were not then so developed in India as it was in Canada and Australia.

The second point which prominently came for decision in the above cases under the Prohibition Act was the power of the Legislature to empower the executive Government to control the use of medicinal and toilet preparations containing alcohol for the purpose of carrying out the prohibition policy. In F.

Bulsara's case, the High Court and the Supreme Court held that the provisions to that effect were not in order. In Tincture Gingerberis's case and Hall's wine's case, the High Court agreed that reasonable restrictions could be imposed. In dealing with the above prohibition cases, it must be admitted that both in the arguments urged by Counsel and by Courts in their decisions much help was derived from the American decisions both before and after the enactment of 18th amendment and even after its repeal when it was substituted by the 21st amendment.

The next case of importance which arose was in connection with the Bombay City Civil Court Act, 1947. The Act was passed for the establishment of the City Civil Court in Bombay. The question was before Government to issue Notifications fixing the pecuniary limits up to which suits could be filed in the City Civil Court. The necessary result of the issue of such Notification was to exclude such cases from the jurisdiction of the original side of the High Court. The measure had created a lot of controversy and a certain section of the public, particularly a certain section of the Bar, was strongly of opinion that the action of the Government in the matter was not proper. The validity of the Notification and of section 4 empowering Government to issue a Notification in the matter was challenged and the High Court upheld the contention, relying mainly on the decision of the Federal Court in Jotindra's case (1949) F. C. R. 595. At the date when the case was decided so far as Indian decisions were concerned the difference between the delegated legislation and conditional legislation was not well known. The American decisions which are based on a complete separation of powers between legislative, executive and judicial-functions were not relevant. So far as the Indian Constitution is concerned, the solution was difficult. The appeal was

heard by the Supreme Court in December 1950. Section 53, Bombay Law Reporter 402. By that time the question of the delegated legislation in the reference in the Delhi Laws Act was not heard and decided. In regard to the Bombay City Civil Court Act, the Supreme Court in appeal set aside the decision of the High Court, and upheld both section 4 and the Notification issued by the Government. In upholding the validity of these provisions the Supreme Court has remarked at page 432 :

“ In enacting section 4 the Legislature itself has decided that it is fit and proper to extend the pecuniary jurisdiction of the new Court, not necessarily and at all events or all at once, but if and when the Provincial Government should think it desirable to do so and accordingly entrusted a discretionary power to the Provincial Government. It is entirely wrong to say that the Legislature has not applied its mind or laid down any policy.”

Such delegation is inevitable in modern legislation, when the Legislature is of a welfare State and has to interfere in various matters of social affairs. Main principles laying down the policy have to be embodied in the Act, but various details must be left to the executive which has to enforce the Act from day to day.

The adoption of the above principles became inevitable when such measures as the Bombay Tenancy and the Land Tenure Abolition Acts were enacted. Soon after the Tenancy Act of 1948 and some of the Land Tenure Abolition Acts were enacted, the Union Government was contemplating the insertion of Article 31-A and the Ninth Schedule to the Constitution. The authorities which were in charge of drafting these provisions had to be convinced that the Land Reform problem in the State of Bombay was entirely dissimilar to that in other provinces such as Uttar

Pradesh and Bihar where the Zamindari system prevailed. So far as the State of Bombay was concerned, it had rayatwari system, the holders of land were mostly occupants of small areas and the Land Tenures were the relics of old Muslim and Maratha Regimes. The reform was undertaken in two parts :

(1) the settlement of relationship between a landlord and his tenants ;

(2) the settlement of the rights of the former vis-a-vis Government.

The Tenancy Act related to the first point. It aimed at :

(i) the abolition of absentee landlordism ;

(ii) the fixity of the term and rent of the land ;

and

(iii) ultimately to make the tillers the owners of the soil.

The above view in regard to Bombay was accepted by those who were in charge of the amendment of the Constitution and the Bombay Tenancy Act as well as six Land Tenure Abolition Acts of Bombay were included in the Ninth Schedule to the Constitution and were protected under Article 31-B from being challenged on the ground that they affected fundamental rights. It is hardly necessary to state that the above amendment has saved both the State, the public and Courts unnecessary time and expenditure on costly and prolonged litigation. The amendment of the Tenancy Act made in 1956 was challenged both in the High Court and the Supreme Court. But the challenge entirely failed.

The next Act which was challenged and which had to be taken to the Supreme Court was the Bombay Sales Tax Act of 1951. In the old days the land revenue and the excise revenue used to be the main sources of revenue. With the adult franchise and a Constitution based on democracy, in a country like India which is mainly an agricultural country, there was

no scope for any increase in land revenues. The second source was given up with the introduction of Prohibition as a measure of social reform. The void in the revenues so created had to be filled up with the other sources. It is well recognised even in the United States of America that the sales-tax revenue is the life-blood of every State. So far as Bombay is concerned it brings a revenue of 47 crores and meets nearly half its budget expenditure. In 1951 the system of the single point sale-tax was altered to multi-point sales-tax. In the meantime the Constitution had come into force and Article 286 excluded certain sales from the imposition of sales-tax. These sales were : (1) outside sales ; (2) import and export sales ; (3) inter-State sales ; and (4) sales of essential commodities. The article was based on the commerce clause in the Constitution of the United States of America. The said clause has been the cause of number of disputes between the Federal Government and States in America and innumerable cases had gone to the Supreme Court there. The article was worded in most curious and defective manner. An explanation was inserted to clause (1) of the Article. It was an explanation to sub-clause (a) which related to outside sales. But the explanation purported to explain inside sales. Although Sales Tax Acts were in operation in all States of India before the Constitution, in view of the curious wording of the article, no attempt was made in any State to modify its Acts in the adaptation orders. It was presumed that the courts would interpret the Acts subject to the Constitution. After the Bombay Act was passed, it came to notice that Madras Government with the consent of the Union Government issued an Ordinance excluding the sales referred to in the Article from the operation of its Act. So far as Bombay was concerned, there was no time to issue an Ordinance. It was considered that in order to meet a challenge on that ground a rule

should be made under the Act exempting the sales specified in Article 286 from taxation under the Act. The Act and the Rules were published on the same day. Motor-car dealers who used to evade the sales-tax in Bombay by obtaining cars from several places outside the State where sales-tax was not in force combined and challenged the validity of the Act in the case of *United Motor v. State of Bombay*. The High Court upheld their contention and held the Act to be *ultra vires* mainly on the ground that it violated Article 286. The High Court held that the rule made excluding the sales referred to in Article 286 could be altered by the State Government at any time and did not cure the defect. The Sales Tax Act of 1946 was repealed by the Act of 1951. The decision of the High Court would have led to the result that there was a void and no sales tax would be in operation for sometime. The ground on which the Act of 1951 was declared invalid applied to the Act of 1946 also although it was a pre-Constitution Act, and would affect assessment and recoveries of the tax which were pending. The financial loss to Government would have been enormous. Immediate steps were taken to validate both the Acts of 1946 and 1951 and to file an appeal to the Supreme Court. The promulgation of the Ordinance was brought to the notice of the Supreme Court and the reason for doing so was explained. The appeal was heard by the Supreme Court. The Union Government and several States intervened. Within a short time after the Advocate General of Bombay opened his arguments, the Supreme Court agreed with the view that the statutory rule made was a law within the meaning of Article 286 and so far as that ground was concerned, the Act was valid. The question then arose about the interpretation of the explanation occurring in Article 286. That became the real matter of controversy. The majority of the Supreme Court was of the view that it affected inter-State sales also. Das

J., differed. The Bombay State succeeded in appeal. Only one rule was held to be invalid. But the controversy regarding the interpretation of the explanation to the Article did not end with the decision in the case. The point again came before the Supreme Court in the case of the Bengal Immunities case and the former decision regarding the interpretation of the explanation was set aside. Ultimately the Parliament amended Article 286 by omitting the controversial explanation and passed the Central Sales Tax Act defining the limits within which inter-States sales could be taxed by the States. The Bombay State has now passed the Bombay Sales Tax Act of 1959 amending and consolidating all previous Acts.

The last Act which evoked some controversy was the Bombay Lotteries and Prize Competition Tax Levying Act of 1952. Prize Competitions were originally taxed in Bombay in 1939. The Act was one of the Acts which was passed to meet the deficit caused by the loss of excise revenue. In 1952 it came to notice that several newspapers running prize competition schemes removed their head offices outside the State and tried to run the competitions from the areas where the Prize Competition Tax Act was not in force. In 1952 it was decided to tax such competitions in so far as their circulation in the State of Bombay was concerned. The Act was challenged by R. M. D. Chamarbagwala and several other newspaper agencies. In the first Court it was held that prize competitions were not gambling but required skill. In the appeal court, it was held that the person who sent solutions to the competitions could be held to be betting or gambling. But one who receives bets does not gamble. So far as the State of Bombay was concerned, the Act yielded revenues to the extent of 50 lakhs. The decision of the High Court, if allowed to stand, would have perhaps affected the validity of several other Acts

such as the Betting Tax Act and the Race Courses Licensing Act. The stake at issue was large. The matter was taken to the Supreme Court and relying on the argument that competitions were gambling and, though licensed and taxed, did not cease to be gambling, the entire Act was held valid. The question was considered in England by two Royal Commissions. The contentions on behalf of Government that prize competitions were gambling was supported by the decision of Hewart, C.J., and three Australian decisions. Shri H. M. Seervai who conducted the case on behalf of Government proved conclusively to the satisfaction of the Court by working out RMDC published competitions that more than one solution was possible to each competition. Ultimately the Union Government passed the Central Prize Competition Act of 1955 to resolve difficulties caused by inter-State Competitions. Thus ended a great and momentous legal battle. The Supreme Court decided the Prize Competition case on 9th April 1957. This was practically the last Act drafted by me, which was challenged and was upheld by the Supreme Court.

I am fully aware of the criticism and comments made in respect of modern legislation as being hasty and defective. It is not the purpose of this article to contend that the above criticism or comments are not justified. But while making that criticism or comments finger is pointed out at the legislation in England or of the early British period. Enactments in India such as the Indian Penal Code, the Indian Evidence Act or the Indian Contract Act took several years before they were enacted. So far as the English statutes are concerned, the supremacy of the British Parliament is well known. It is said that the British Parliament can make anything except to turn a man into a woman. But even it has attempted to do that for the purpose of the interpretation of its statutes. In the very first provision of the Interpretation Act of 1889

it has provided that the words importing masculine gender shall include females. In relation to Indian enactments which were enacted until 1919 anything could be enacted for peace and good government (See Article 80-A of the Government of India Act of 1919.) There were no separate legislative Lists neither fundamental rights, nor such provisions as Article 286 of the Constitution. The circumstances under which Laws have to be enacted at present are entirely different from those under which they were enacted in old times. Even the Indian Constitution of 1950 debated by the Constituent Assembly for nearly 3 years and scrutinised by eminent lawyers in the country, had to be amended seven times during a span of 6 years. The obvious reason being that the present-day legislation is not restricted to the matters of law and order and recovery of taxes but has to meet the needs of a social welfare State. Moreover the drafting of the Indian Penal Code was started in 1833 and the Indian Penal Code became law in 1860. I know of two instances in which the draftsman had at his command a few hours only in preparing the Bill. These instances are the Bombay Forfeited Land Restoration Act, 1938 and the Bombay Urban Immovable Property Tax Act, 1939. As stated by the American Drafting Expert—Reed Dickerson; “Let me have the draft by Thursday-noon”. Moreover as stated by an American writer, a draftsman merely frosts the legal cake.

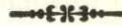
“His job is to know the problems in detail, foresee the pit-falls (as far as he can with the time placed at his disposal) bring those to the client’s attention and present the relevant choices that the client must sooner or later make. But he must not forget that he is the legislative, midwife, he is not having the baby himself.”

In conclusion, I must admit that I always remembered the words of Sir Rashbihari Ghose uttered by him at the conclusion

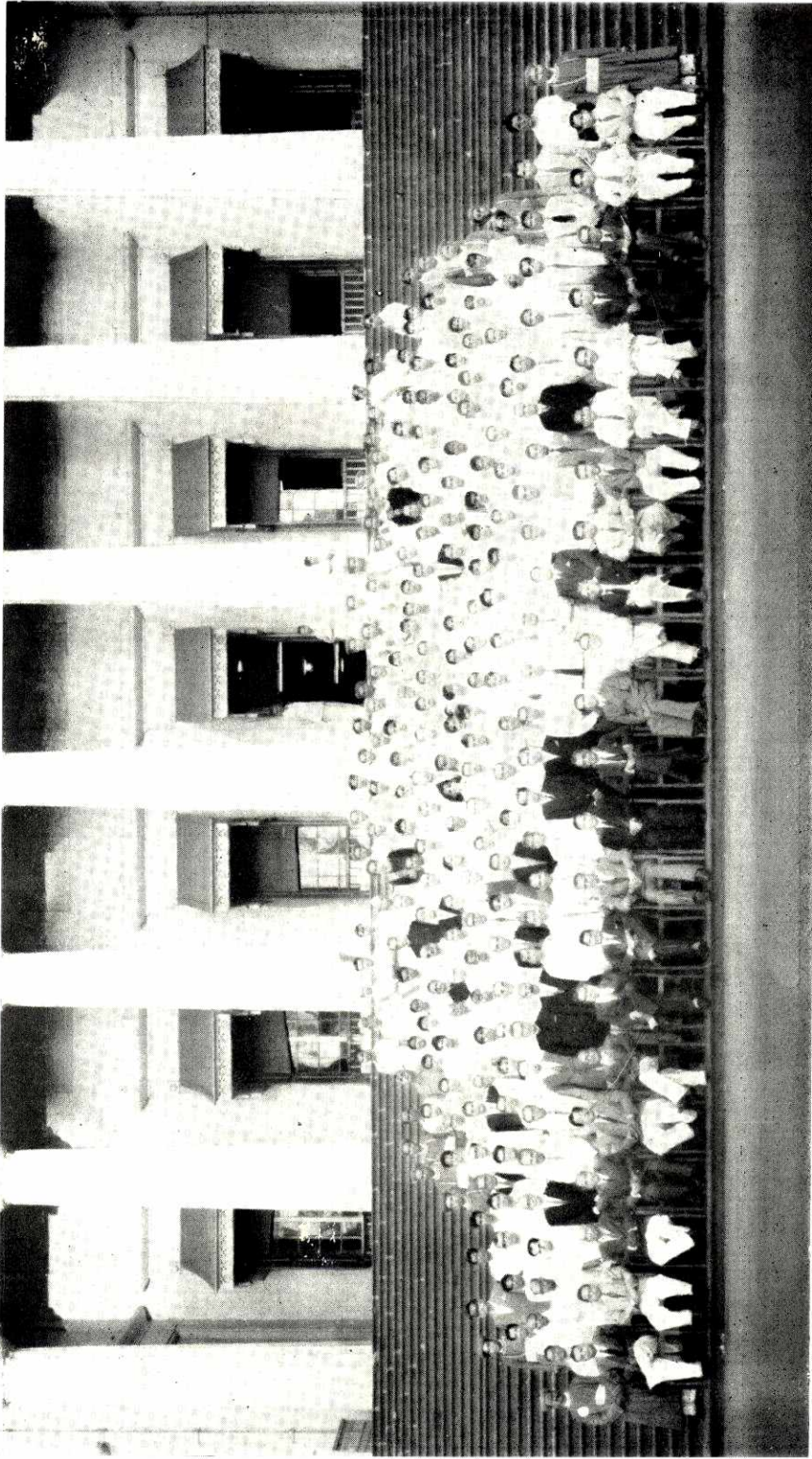
of his Tagore Law Lectures at the Calcutta University in 1889 and those words are :

“ He knoweth not the law who does not know the reason thereof.”

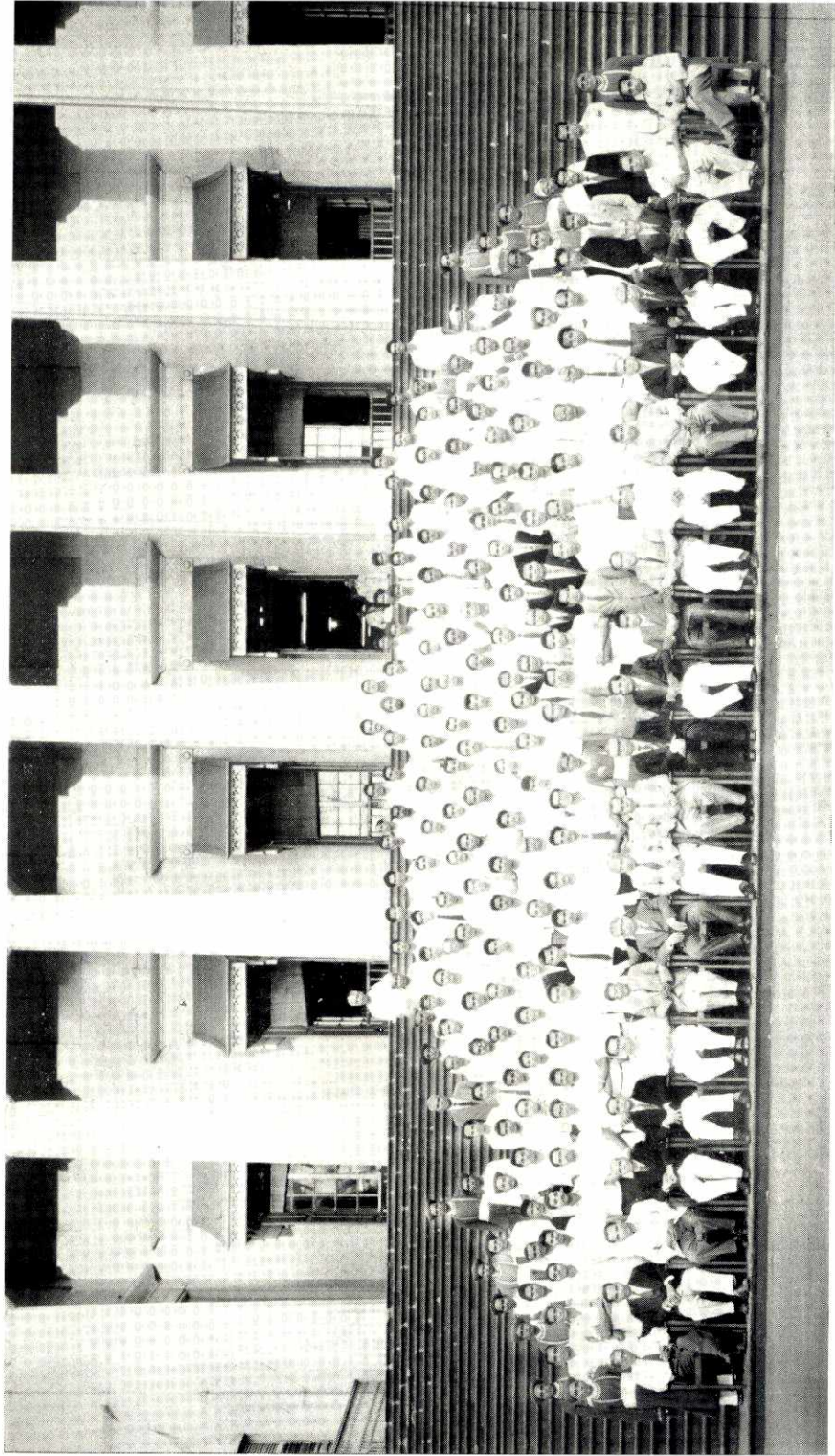
He adds : “ It may not be given to every one to attain high forensic skill, but time given to a scientific study of law is never wholly thrown away ; for legal practice is not a thing apart from legal science. Laborious days are not always crowned with riches or honour ; for the race is not invariably to the swift, nor the battle to the strong, but professional distinction can be won in more ways than many of us can imagine.”



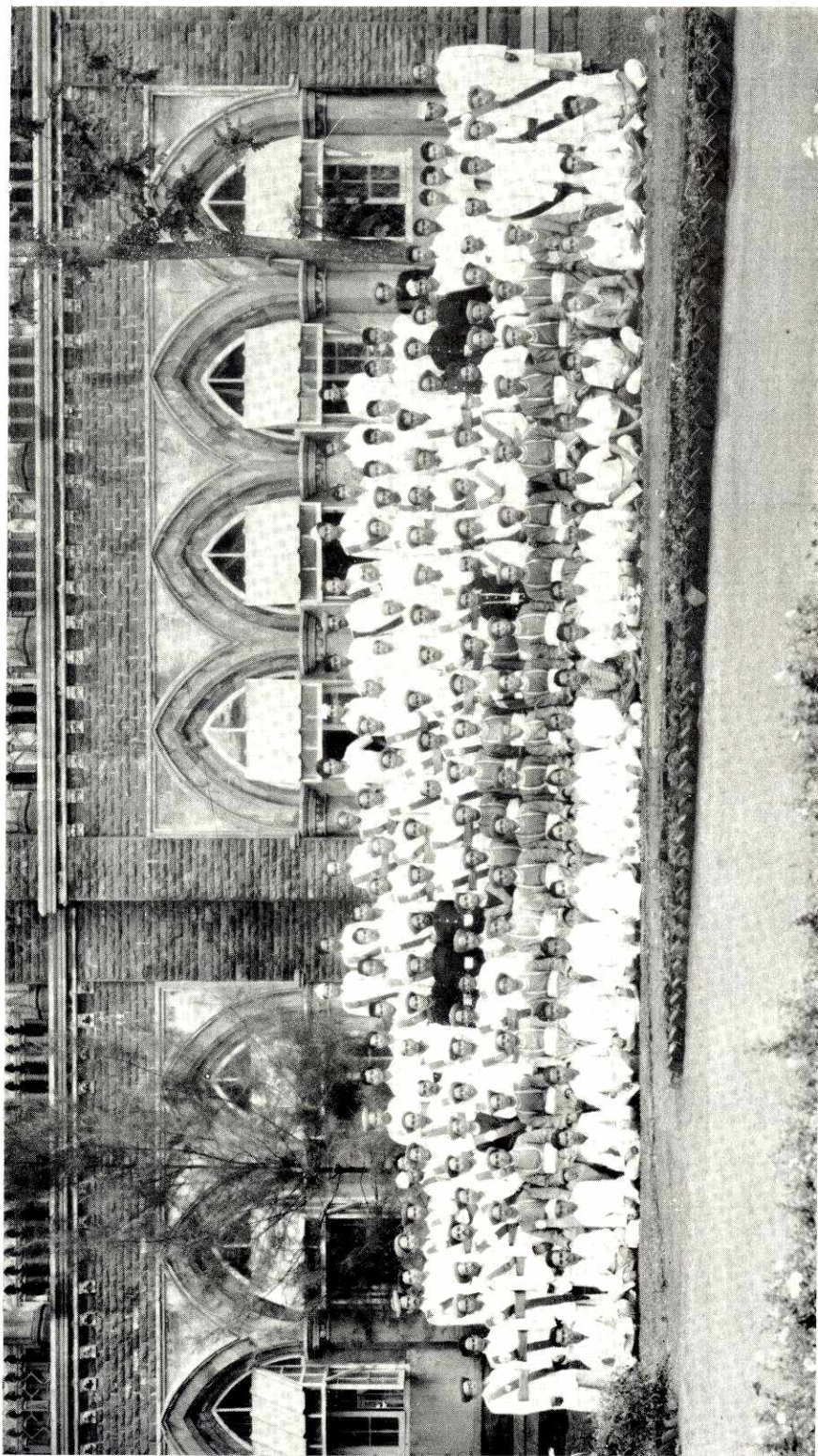
Members of the Staff of High Court
at Bombay & Nagpur



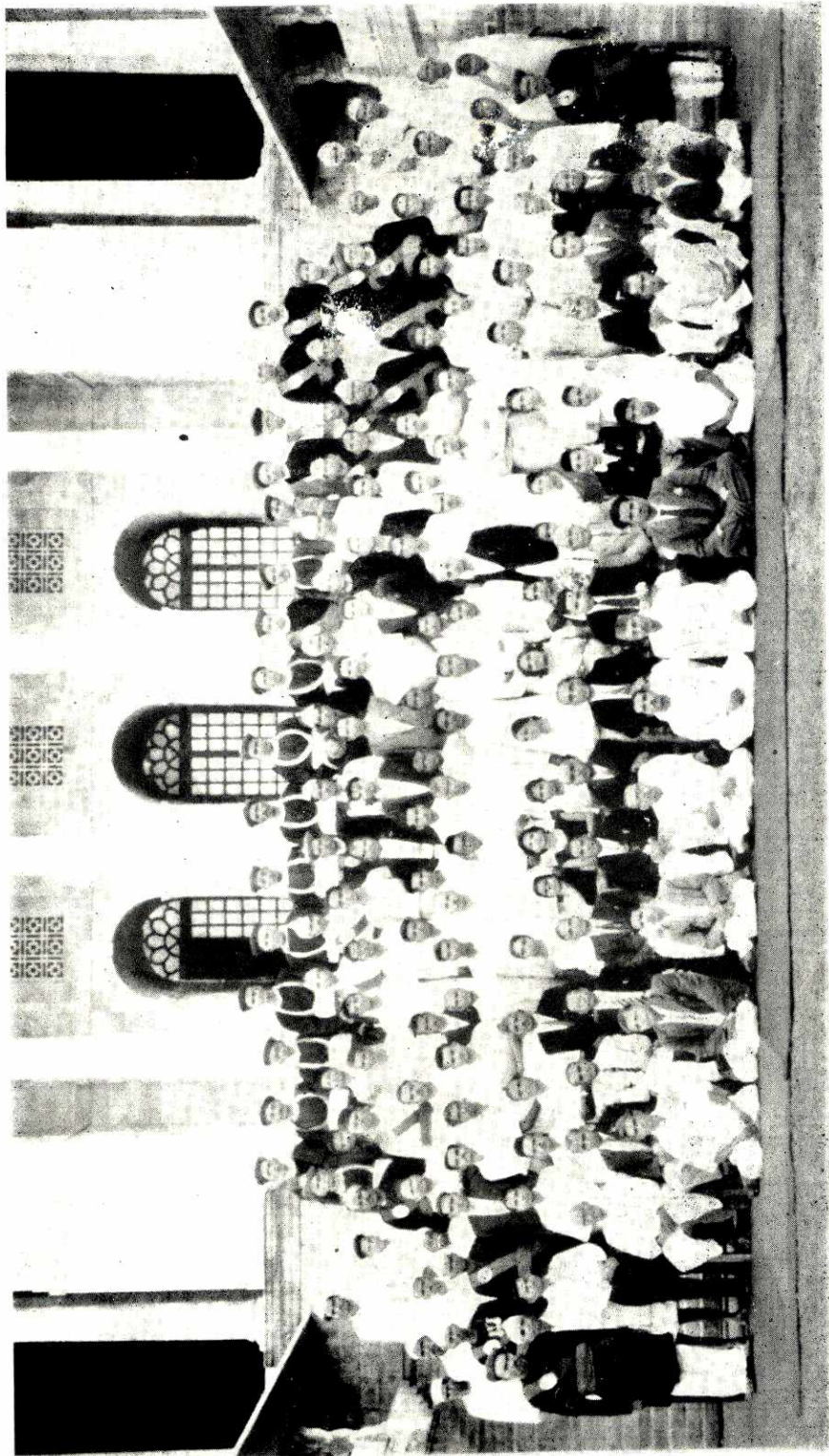
Officers and Staff of the High Court, Original Side



Officers and Staff of the High Court, Appellate Side



Class IV Establishment, High Court, Bombay



Officers and Staff of the High Court, Nagpur

Names of the Chief Justices and Judges
of the High Court at Bombay

*NAMES OF THE CHIEF JUSTICES OF THE
HIGH COURT AT BOMBAY*

(1862 to 1962)

Sir Mathew Richard Sausse, Kt., Barrister-at-Law.

Sir Richard Couch, Kt., Barrister-at-Law.

Sir Michael Roberts Westropp, Kt., Barrister-at-Law.

Sir Charles Sargent, Kt., M.A. (Cantab.), Barrister-at-Law.

Sir Charles Frederick Farran, Kt., Barrister-at-Law.

Sir Louis Addin Kershaw, Kt., Barrister-at-Law.

Sir Lawrence H. Jenkins, K.C.I.E., M.A. (Oxon.), Barrister-
at-Law.

Sir Basil Scott, Kt., M.A. (Oxon.), Barrister-at-Law.

Sir Norman Cranstoun Macleod, Kt., B.A. (Oxon.), Barrister-
at-Law.

Sir Amberson Barrington Marten, Kt., LL.D., M.A. (Cantab.),
Barrister-at-Law.

Sir John William Fisher Beaumont, Kt., Q.C., M.A. (Cantab.).

Sir Leonard Stone, Kt., Q.C.

Mahommedali Currim Chagla Esqr., B.A. (Oxon.), Barrister-
at-Law.

Hashmatrai Khubchand Chainani Esqr., B.A. (Cantab.), I.C.S.

*NAMES OF THE JUDGES OF THE HIGH COURT
AT BOMBAY*

(1862 to 1962)

- Sir Joseph Arnould, Kt., Barrister-at-Law.
Richard Couch Esqr., Barrister-at-Law (became Chief Justice
on 28th April 1866).
Henry Herbert Esqr., I.C.S.
Claudius James Erskine Esqr., I.C.S.
Alexander Kinloch Forbes Esqr., I.C.S.
Henry Newton Esqr., I.C.S.
Augustus Brooke Warden Esqr., I.C.S.
Henry Pendock St. George Tucker Esqr., I.C.S., Barrister-at-Law.
Michael Roberts Westropp Esqr., Barrister-at-Law (became
Chief Justice on 1st April 1870).
J. S. Hore Esqr., Barrister-at-Law (acting).
Thomas Chisholm Anstey Esqr., Barrister-at-Law (acting).
Janardhan Wassodewji Esqr., Pleader (acting).
James Gibbs Esqr., I.C.S., Barrister-at-Law.
Sir Charles Sargent, Kt., M.A. (Cantab.), Barrister-at-Law
(became Chief Justice on 9th August 1882).
Francis Lloyd Esqr., I.C.S.
Lyttelton Holyoake Bayley Esqr. (afterwards Sir Lyttelton),
Barrister-at-Law (acted as Chief Justice).
Maxwell Melvill Esqr. (afterwards Sir Maxwell), I.C.S.
Charles Gordon Kembal Esqr., I.C.S., Barrister-at-Law.

Raymond West Esqr. (afterwards Sir Raymond), M.A., I.C.S.,
Barrister-at-Law.

J. P. Green Esqr., LL.B., Barrister-at-Law.

Robert Hill Pinhey Esqr., I.C.S., Barrister-at-Law.

Nanabhai Haridas Esqr., LL.B., Pleader.

John Marriott Esqr., Barrister-at-Law (acting).

Baron De H. Larpent Esqr., I.C.S. (acting).

G. Atkinson Esqr., Barrister-at-Law (acting).

F. D. Melvill Esqr., I.C.S. (acting).

F. L. Latham Esqr., Barrister-at-Law (acting).

J. Scott Esqr. (afterwards Sir John), Barrister-at-Law.

H. M. Birdwood Esqr., M.A., LL.D. (Cantab.), I.C.S.,
Barrister-at-Law.

W. E. Hart Esqr., Barrister-at-Law (acting).

Sir W. Wedderburn, Bart., I.C.S. (acting).

John Jardine Esqr. (afterwards Sir John), I.C.S. (acted as
Chief Justice).

C. F. Farran Esqr., Barrister-at-Law (became Chief Justice on
20th June 1895).

H. J. Parsons Esqr., I.C.S., Barrister-at-Law (acted as Chief
Justice).

E. T. Candy Esqr., I.C.S. (acted as Chief Justice).

K. T. Telang Esqr., M.A., LL.B., Advocate (O. S.)

E. M. H. Fulton Esqr., I.C.S.

M. H. Starling Esqr., Barrister-at-Law (acting).

M. G. Ranade Esqr., M.A., LL.B., C.I.E., Advocate (O. S.).

A. Strachey Esqr., Barrister-at-Law (became Chief Justice of
the High Court of North-West Provinces).

Badrudin Tyabji Esqr., Barrister-at-Law (acted as Chief Justice).

E. Hosking Esqr., I.C.S. (acting).

L. P. Russell Esqr., Barrister-at-Law (acted as Chief Justice).

W. H. Crowe Esqr., I.C.S., Barrister-at-Law.
 H. Batty Esqr., I.C.S.
 G. C. Whitworth Esqr., I.C.S. (acting).
 Narayan Ganesh Chandavarkar Esqr. (afterwards Sir
 Narayan) B.A., LL.B. (acted as Chief Justice).
 V. J. Kirtikar Esqr., Pleader (acting).
 H. F. Aston Esqr., I.C.S., Barrister-at-Law.
 J. Jacob Esqr., I.C.S. (acting).
 S. L. Batchelor Esqr. (afterwards Sir Stanley), B.A. (Oxon.),
 I.C.S. (acted as Chief Justice).
 B. Scott Esqr. (afterwards Sir Basil), M.A. (Oxon.), Barrister-
 at-Law (became Chief Justice on 22nd April 1908).
 D. D. Davar Esqr. (afterwards Sir Dinshaw), Barrister-at-
 Law (acted as Chief Justice).
 F. C. O. Beaman Esqr. (afterwards Sir Frank), I.C.S.,
 J. J. Heaton Esqr. (afterwards Sir Joseph), I.C.S. (acted as
 Chief Justice).
 M. P. Khareghat Esqr., I.C.S. (acting).
 R. Knight Esqr., I.C.S. (acting).
 Norman Cranstoun Macleod Esqr. (afterwards Sir Norman),
 B.A. (Oxon.), Barrister-at-Law (became Chief Justice on 1st
 June 1919).
 Mahadev Bhaskar Chaubal Esqr. (afterwards Sir Mahadev),
 B.A., LL.B. (acting).
 L. J. Robertson Esqr., Barrister-at-Law (acting).
 G. S. Rao Esqr. (afterwards Diwan Bahadur), M.A., LL.B.
 (acting).
 Lallubhai Asharam Shah Esqr. (afterwards Sir Lallubhai),
 M.A., LL.B. (acted as Chief Justice).
 Sir Amberson B. Marten Esqr., M.A., LL.B. (Cantab.),
 Barrister-at-Law (became Chief Justice on 7th June 1926).

M. H. W. Hayward Esqr. (afterwards Sir Maurice),
 B.A., LL.B. (Cantab.), Barrister-at-Law, I.C.S.

E. M. Pratt Esqr., I.C.S.

A. M. Kajiji Esqr., B.A., LL.B. (Cantab.), Barrister-at-Law.

C. G. Hill Fawcett Esqr. (afterwards Sir Charles), I.C.S.
 (acted as Chief Justice).

L. C. Crump Esqr. (afterwards Sir Louis), I.C.S.

Sir Chimanlal Harilal Setalvad, Kt., B.A., LL.B., Advocate
 (O. S.) (additional).

Jamshedji Byramji Kanga Esqr. (afterwards Sir Jamshedji),
 M.A., LL.B., Advocate (O. S.) (additional).

Norman Wright Kemp Esqr. (afterwards Sir Norman),
 Barrister-at-Law (acted as Chief Justice).

Charles Augustus Kincaid Esqr., C.V.O., I.C.S. (acting).

Hormazdiar Cuvarji Coyajee Esqr., LL.B., Advocate (O. S.)
 (acting).

D. F. Mulla Esqr., (afterwards the Right Honourable
 Sir Dinshah), M.A., LL.B., Advocate (O. S.) (acting).

V. F. Taraporewala Esqr., B.A., LL.B., Barrister-at-Law (acting).

G. D. Madgavkar Esqr. (afterwards Sir Govind), B.A., I.C.S.
 (acted as Chief Justice).

Mirza Ali Akbar Khan Esqr. B.A., Barrister-at-Law (acted as
 Chief Justice).

P. E. Percival Esqr., C.I.E., B.A. (Oxon.), I.C.S., Barrister-at-
 Law (acting).

C. P. Blackwell Esqr. (afterwards Sir Patrick), M.B.E.
 (Mily. Dn.), B.A. (Oxon.), Barrister-at-Law (acted as Chief
 Justice).

F. S. Talyarkhan Esqr., Barrister-at-Law (acting).

S. S. Patkar Esqr. (afterwards Sir Sitaram) B.A., LL.B.
 (acted as Chief Justice),

W. T. W. Baker Esqr. (afterwards Sir William) B.A. (Oxon.),
 I.C.S. (acted as Chief Justice),

S. S. Rangnekar Esqr. (afterwards Sir Sajba) B.A., LL.B.,
 Barrister-at-Law (acted as Chief Justice).

J. D. Davar Esqr., Barrister-at-Law (acting).

K. Mc. I. Kemp Esqr., Barrister-at-Law (acting).

K. M. Jhaveri Esqr., M.A., LL.B. (acting).

B. J. Wadia Esqr. (afterwards Sir Bomanji), M.A., LL.B.,
 Barrister-at-Law.

S. J. Murphy Esqr. (afterwards Sir Stephen), I.C.S.

Balak Ram Esqr., I.C.S. (acting).

A. C. Wild Esqr., I.C.S. (acting).

F. W. Allison Esqr., I.C.S. (acting).

R. S. Broomfield Esqr. (afterwards Sir Robert) B.A. (Cantab.),
 Barrister-at-Law, I.C.S. (acted as Chief Justice).

P. B. Shingne Esqr. (afterwards Diwan Bahadur), B.A.,
 LL.B. (acting).

K. W. Barlee Esqr. (afterwards Sir Kenneth), B.A. (Dub.),
 Barrister-at-Law, I.C.S.

Harilal Jekisondas Kania Esqr. (afterwards Sir Harilal),
 B.A., LL.B., Advocate (O. S.) (acted as Chief Justice).

D. D. Nanavati Esqr., B.A. (Cantab.), Barrister-at-Law,
 I.C.S. (acting).

F. B. Tyabji Esqr., M.A., Barrister-at-Law (additional).

N. J. Wadia Esqr. (afterwards Sir Nawroji), B.A. (Cantab.),
 Barrister-at-Law, I.C.S.

H. V. Divatia Esqr. (afterwards Sir Harsidhbhai), B.A., LL.B.

A. S. R. Macklin Esqr. (afterwards Sir Albert), B.A. (Oxon.),
 I.C.S.

K. C. Sen Esqr., B.A. (Cantab.), I.C.S.

A. A. Chitre Esqr., B.A., LL.B., Advocate (O. S.) (acting).

K. B. Wassoodew Esqr., B.A., LL.B.
 N. P. Engineer Esqr. (afterwards Sir Nusserwanji), B.A., LL.B.
 (O. S.), (additional).
 M. A. Somjee Esqr., B.A., LL.B., Barrister-at-Law.
 D. R. Norman Esqr., I.C.S. (acting).
 G. N. Thakore Esqr., B.A., LL.B., Advocate (acting).
 N. S. Lokur Esqr., B.A., LL.B.
 Indranarayan Brijmohanlal Esqr., B.A., LL.B. (acting).
 M. C. Chagla Esqr., B.A. (Oxon.), Barrister-at-Law (became
 Chief Justice on 3rd January 1948).
 Eric Weston Esqr., (afterwards Sir Eric), B.A. (Cantab.), I.C.S.
 N. H. C. Coyajee Esqr., B.A., B.Sc. (London), Barrister-at-Law
 (acted as Chief Justice).
 J. B. Blagden Esqr., M.A. (Oxon), Barrister-at-Law.
 K. A. Somjee Esqr., M.A., LL.B., Barrister-at-Law (additional).
 G. S. Rajadhyaksha Esqr., M.A. (Cantab.), Barrister-at-Law,
 I.C.S.
 N. H. Bhagwati Esqr., B.A., LL.B., Advocate (O. S.).
 R. S. Bavdekar Esqr., B.A. (Bom. and Cantab.), I.C.S.
 P. B. Gajendragadkar, M.A., LL.B., Advocate (A.S.).
 Y. V. Dixit Esqr., B.A., LL.B., Advocate (A. S.) (acted as
 Chief Justice).
 S. R. Tendolkar Esqr., Barrister-at-Law.
 M. V. Desai Esqr., B.A., LL.B., Barrister-at-Law (additional).
 R. A. Jahagirdar Esqr., B.A., LL.B. (additional).
 K. T. Mangalmurti Esqr., B.Sc., LL.B., I.C.S.
 Hashmatrai Khubchand Chainani Esqr., I.C.S. (became
 Chief Justice on 29th September 1958).
 J. C. Shah Esqr., B.A., LL.B., Advocate (O. S.).
 J. R. Mudholkar Esqr., B.A., LL.B., Barrister-at-Law (acted as
 Chief Justice).

D. V. Vyas Esqr., B.A. (Bom. Cantab.), M.A. (Cantab.), I.C.S.
 M. C. Shah Esqr., B.A. (Hons.), LL.B.
 S. T. Desai Esqr., B.A., LL.B., Barrister-at-Law.
 Y. S. Tambe Esqr., B.A., LL.B. (acted as Chief Justice).
 B. N. Gokhale Esqr., B.A., LL.B., Advocate.
 Schripatrau Palnitkar Esqr., B.A. (Hons.), LL.B.
 S. P. Kotval Esqr., B.A., LL.B.
 K. G. Datar Esqr., B.A., LL.B.
 K. T. Desai Esqr., B.A., LL.B., Advocate (O. S.).
 J. M. Shelat Esqr., M.A. (Lond.), Barrister-at-Law.
 N. A. Mody Esqr., B.A., LL.B., Advocate (O. S.).
 N. M. Miabhoy Esqr., B.A., LL.B.
 G. B. Badkas Esqr., M.A., LL.B.
 V. M. Tarkunde Esqr., B.Ag. (Bom.), Barrister-at-Law.
 D. V. Patel Esqr., B.Sc., LL.B.
 V. S. Desai Esqr., B.Sc., LL.B.
 K. K. Desai Esqr., B.A., LL.B., Advocate (O. S.).
 V. A. Naik Esqr., B.A. (Hons.), LL.B.
 V. B. Raju Esqr., M.A., Diploma in Economics (Madras),
 I.C.S. (additional).
 S. G. Patwardhan Esqr., B.A., B.Sc., LL.M. (additional).
 S. M. Shah Esqr., Barrister-at-Law. (additional).
 N. L. Abhyankar Esqr., B.A., LL.B.
 M. G. Chitale Esqr., B.A., LL.B.
 Y. V. Chandrachud Esqr., B.A., LL.B.
 D. P. Shikhare Esqr., B.A., LL.B. (additional).
 D. G. Palekar Esqr., B.A. (Hons.), LL.B. (additional).
 R. M. Kantawala Esqr., M.A., LL.B., Advocate (O. S.)
 (additional).

