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"Eendracht maakt Macht"

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DUTCH IN CEYLON

VOL. I.

BY

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VOL. XXXVIII.] JANUARY, 1948. [No. 1.

THE JUDICIARY — PAST AND PRESENT.

On the 15th February, 1796, the capitulation of Colombo took place. It is interesting to note that in the midst of war the laws had not been silent. Article 23 of the conditions offered by the Dutch Governor of Ceylon, Van Angelbeek, for the capitulation was in this form:

"All Civil Suits depending in the Council of Justice shall be decided by the same Council according to our Laws."

The British answer was, "Granted, but they must be decided in twelve months from this date."

The Dutch Courts.

The reference to the Council of Justice was to the Hof Van Justitie. According to Sir Richard Ottley, Chief Justice of Ceylon in his reply dated 1830 dealing with the Dutch Courts to the Royal Commission of Enquiry, the first and highest Court was the Hof van Justitie, which exercised an original jurisdiction in all suits between Europeans or the descendants of Europeans, where the subject matter was more than 120 rix dollars in value.

This Court also exercised an original civil jurisdiction over Sinhalese in the Fort of Colombo or at any place within Kayman's Gate, where the subject matter was over 120 rix dollars in value.

This Court in Colombo also exercised an appellate jurisdiction over the Landraad Court of Colombo, and over the Hof van Kleine Gerechts Zaaken, as well as over the Hof van Justitie of Galle, of Matara and of Jaffna.

It was the "highest Court in Ceylon, and the Court of last resort in all matters civil and criminal. But an appeal lay from its judgment to Batavia."

Next in order was the Court of Landraad, which exercised jurisdiction over Sinhalese in respect of disputes relating to land, and in matters of contract and debt where the matter in dispute exceeded 120 rix dollars.

Inferior to the Landraad was the Hof van Gerechts Zaaken for contracts and debts not exceeding 120 rix dollars. This was purely a civil court and had no criminal jurisdiction.

At Galle there were similar courts, with the Hof van Justitie at the top; and a similar system prevailed in Jaffna.

As regards criminal courts, the highest was the Hof van Justitie at Colombo, but there were subordinate Courts at Galle, Matara and Jaffna, from whom an appeal lay to the Hof van Justitie at Colombo, and from there to Batavia.

Below the Hof van Justitie was the Court of the Fiscal, which took cognisance of minor offences.

Dutch Courts cease to function.

Of the Courts mentioned above, the Landraads and other Courts apparently ceased to exercise jurisdiction at the time of the capitulation. The Hof van Justitie was allowed to function for one year. The Island was thus left without legal courts. The Dutch officials who were still subjects of Holland firmly refused for some period to take the oath of allegiance and accept judicial appointment under the British Crown. Special measures had to be taken to meet this situation.

By the **Proclamation of the 23rd September, 1799**, it was published and declared that the administration of Justice and Police in Ceylon should be exercised by all Courts of Judicature, Civil and Criminal, Magistrates, and Ministerial Officers according to the laws and institutions that subsisted under the ancient Government of the United Provinces, subject to any alteration resulting from emergency or necessity, and subject to any alterations contained in the Proclamation and those which may subsequently be made.

Under this Proclamation certain forms of punishment were abolished, and hanging was made the ordinary punishment for a capital offence, and it was ordered that in criminal cases the proceedings should be public and in open court.

Further, the criminal jurisdiction of the three chief courts of the towns of Colombo, Jaffnapatam and Galle—Hof van Justitie—was consolidated and exercised by one tribunal only. Meanwhile, as before, the Fiscal was to take cognizance of inferior offences.

As regards the civil courts, the jurisdiction of the Civil or Town Courts of Colombo, Jaffnapatam and Galle was extended to cover all civil causes of whatever amount. These courts were styled "Civil Courts". There was to be one judge for the Civil Court, and three judges for the Criminal Court.

The County Courts or Landraads were to be resumed.

The Governor, the Commander of the Forces, and the Secretary to the Government were to form a Court of Appeal, and the right to appeal therefrom to the King in Council was permitted where the value was over £500 or 5000 rix dollars. In certain cases appeal was to the Governor and such chief or associate judge as he may appoint.

By the **Proclamation of the 14th October, 1799**, the consolidation of the criminal jurisdiction of the three Town Courts was completed, and the Supreme Court of Criminal Jurisdiction was established. It is interesting to note that of the five judges appointed one was Major-General Hay Macdowal, another was Hugh Cleghorn, the Secretary to the Government, and a third was Colonel Champagne. The other two were a barrister and a commercial resident. By this Proclamation the Court of Appeal in civil cases was also set up as a separate body.

The failure of the Dutch Courts to function was referred to in another Proclamation of the same date, where it is said that "the said Courts of Judicature on a sudden discontinued and sur-ceased the performance of their judicial functions." In fact, as already mentioned, the time limit imposed in the Capitulation came into effect. Special provisions were devised to meet the situation which resulted from this and to provide for the intermediate period.

By the **Proclamation of the 22nd January, 1901**, a Code of Civil Procedure was introduced to get rid of "the great diversity which has taken place, not only between courts of different denominations but in those of the same and in different causes in the same court." The transition from the procedure of the Dutch Courts to the new "summary" procedure established had not gone smoothly.

Charter of 1801.

It is interesting to consider this period of transition. The predominance of the executive and of the military in the realm of the administration of justice is marked. It was not until the Charter of 18th April, 1801, that the establishment of the real judiciary emerged.

The principal feature of this Charter was the establishment of a Court of Record, called the Supreme Court of Judicature in the Island of Ceylon. That Court was to consist of a Chief Justice and one Puisne Justice, who had to be barristers of not less than five years standing. This Court had a seal bearing His Majesty's Arms.

The jurisdiction of the Supreme Court embraced jurisdiction in civil cases in respect of the Town and Fort of Colombo and the surrounding District as defined by the Governor, and over all Europeans resident in Ceylon. But the jurisdiction of the Landraad of Colombo was reserved in the case of Sinhalese and Muslims. The Court had also a criminal jurisdiction in the case of several important criminal offences. Further, the Court exercised jurisdiction in Matrimonial and Testamentary Cases, and granted probates of wills and letters of administration. It is interesting to note that this Court was also constituted a Court of Equity, similar to the Court of Chancery.

The Charter of 1801 also established a Court of Record styled The High Court of Appeal in the Island of Ceylon, with jurisdiction to hear and determine appeals from any Courts of Justice in Ceylon—except the Supreme Court of Judicature already mentioned. The Judges of this Court were the Governor, the Chief Justice, the Puisne Justice and the Secretary of State, or any two of them. This Court had its own seal. There was to be an ultimate appeal to the King in Council.

The first Chief Justice was Sir Edward Codrington Carrington, and the first Puisne Justice the Rt. Hon. Mr. E. C. Lushington.

In the same year (Proclamation of 20th August, 1801) English was made the official language of the Courts.

Conflicts.

The newly won authority of the Supreme Court was not always acknowledged, and in the early years there was on occasion conflict between this Court on the one side and the military and the executive authority on the other. As early as 1804 the Supreme Court had occasion to issue a Rule on the Commander-in-Chief and Lieutenant-Governor of the Island to appear in Court and answer a charge of contempt. The General appeared in Court surrounded by the officers of the garrison, and the parade ground in the vicinity of the court was filled with soldiers. The officers wore their swords and the soldiers had fixed bayonets. The Chief Justice objected to this display of force, and the crier of the court was directed to proclaim that no one was to remain in the court premises with swords or bayonets, and the order was immediately enforced, even in the case of the General and his suite. In the result the General was ordered to enter into recognizances to keep the peace in the sum of Rs. 100,000, and the Fiscal was charged to take his body in custody until he should comply with the order. The General entered into the recognizances and the matter ended there.

But this incident had a sequel, for the Supreme Court was shortly after removed from the Fort to the "spacious and airy house of Mr. Bertolacci with a sufficient demesne around it", and since then the Supreme Court has been housed at Hulftsdorp. The Judges protested against this removal but the protest was without avail.

In 1807 again a conflict arose between Governor Maitland and E.C. Lushington who had now become Chief Justice. Maitland appears to have held the view that in the East "the intrusion of a Judge on the Sovereign's sphere of action is nothing more or less than a challenge to His authority." The details of the conflict are not quite clear, but the upshot of it was that the Chief Justice received an appointment in England and the Governor Maitland remained in Ceylon and regarded himself as having triumphed.

By 1802 the Landraads began to give way to the new Provincial Courts which were set up, and the Magistrates no longer functioned as Fiscals but under the denomination of Justices of the Peace or Sitting Magistrates.

Charter of 1810.

The next landmark in the history of the Judiciary is the Charter of the 6th August 1810. By this the Supreme Court of Judicature was constituted a Court of Civil and Criminal Jurisdiction, with full power and authority to administer justice and law in every part of Ceylon and over all its inhabitants in matters civil and criminal. The Supreme Court was to sit in two divisions, the Chief Justice presiding over the First Division and the Puisne Justice over the Second Division. The

Chief Justice was to sit in Colombo and be in charge of the Southern portion of the Island, and the Puisne Justice was to sit at Jaffnapatam and to have jurisdiction over the Northern portion. Each division was to have the powers of the whole Court, but provision was made for the Judges to sit together in certain cases of importance.

The Provincial Courts were unnecessary and were abolished, but the Landraads were revived in certain districts. The Proclamation of the 12th November 1811 brought these provisions into effect.

Trial by Jury.

This Charter of 1810 is also of importance because it introduced Trial by Jury in Criminal Cases before the Supreme Court. Originally the panel consisted of 13 jurors drawn from a list prepared from each Province or District, of "good and sufficient persons with such qualifications as are laid down" in Rules to be framed by the Chief Justice. But provision was made, where it was necessary to secure an impartial trial, for a direction to have on the panel jurors consisting of British or Europeans or Sinhalese only.

The Proclamation of the 23rd November, 1811, introduced this change into Ceylon with an interesting, if somewhat pompous, injunction to the people of Ceylon. "As it is in the nature of a Jury that while every person admitted into that body exercises to a certain extent the office of a Judge over his fellow subjects, each in his turn is subjected to the impartial judgment of his neighbours and equals.....All classes of inhabitants will on the one hand set a due value upon a Trial so universally celebrated, and on the other hand be sensible of the important functions they are called upon to fulfil and aspire to the respectability which may entitle them to so great a trust."

I may merely add that 13 jurors continued to function until by Ordinance 3 of 1883 the number of jurors was to consist of an uneven number, not less than 7 or more than 9. In the case of offences punishable with death 9 jurors were essential. By the Criminal Procedure Code of 1898 the number of jurors in all cases was reduced to seven. By this Ordinance a bare majority was not enough, and no legal verdict of less than five to two could be entered.

Although the impartiality and efficiency of trial by jury in Ceylon has on occasion been disputed, on the whole the testimony of no less an authority than Sir Charles Marshall, C.J. "to the conscientious, intelligent and independent discharge of their important duties by all classes of jurors in Ceylon" will, I think, have general acceptance.

Trial by Jury in Ceylon must always be connected with the name of Sir Alexander Johnstone, for it was mainly due to his efforts that this system was introduced here. This eminent Chief Justice will also be remembered for the active part he played in preparing the way for the abolition of slavery in Ceylon.

The Charter of 1810 is a very interesting experiment. By it was constituted a body approximating to a High Court of Justice on the English model, with jurisdiction over the whole of Ceylon in matters

both civil and criminal. But there was one marked difference from the English system, in that there was no provision forappeals within Ceylon from the Supreme Court, more particularly in civil matters. The Appellate Court did not entertain appeals from the Supreme Court,—and in fact it would have been absurd to do so as the appeal would have ordinarily lain to the very judges who had tried the case originally. It is interesting to speculate upon the possibility of our system having developed upon the lines of the Charter of 1810. It is possible that we may in Ceylon have approximated to what has been called "the centralised system" of the judiciary which is found in other parts of the British Empire. Under that system the whole administration of justice is centralised in the Judges of the Supreme Court, who deal with the great bulk of original civil jurisdiction. The Supreme Court also has a civil appellate jurisdiction, but only from inferior courts created to deal with the smaller cases. The Supreme Court also exercises an original jurisdiction in criminal cases and tries the more important cases, such as murder, but it also hears appeals from the minor criminal courts. I think that such a development would have been ill-suited to Ceylon, particularly as regards civil jurisdiction and the right of appeal in that respect. The original criminal jurisdiction of the Supreme Court always existed and was well suited to Ceylon conditions. On the whole it was fortunate that the Charter of 1810 was not persisted in, as regards the civil jurisdiction of the Supreme Court, although the solution of the Charter of 1811 was also not very satisfactory.

However, it was not these considerations that decided the fate of the Charter of 1810. Trial by Jury had been supported by Governor Maitland very largely to off-set the authority of the Supreme Court. But the Charter itself did not reproduce the ideas of the Governor. In the Instructions accompanying the Charter, while the Governor was to be regarded as the Representative of the Crown, the Chief Justice was to be President of the Council, and the Great Seal was to be in the custody of the President. Undoubtedly this gave the Chief Justice very high political powers. This did not fail to be obnoxious to the Governor, and it was probably this aspect of the matter which decided the fate of the Charter of 1810. On consideration it does appear undesirable that the Chief Justice should have those political powers.

Charter of 1811.

In fact the Charter of 1810 lasted only for a few months. It was followed closely by the Charter of the 30th October, 1811. Besides dealing with the matter I have referred to, this new Charter revoked and annulled the extension of the civil jurisdiction of the Supreme Court contained in the earlier Charter, and restored only the jurisdiction which the Supreme Court had prior to the earlier Charter. The division of the Supreme Court into northern and southern divisions was also abolished. The Provincial Courts which had been done away with were revived or restored. These changes were gradually brought into effect within the next few years.

Judiciary vs. Executive.

It may be of interest to record a very sharp clash between the Supreme Court and the Executive Authority in the year 1824. It arose with regard to the issue of a Writ of Habeas Corpus in respect of a person who was eventually discovered—after a great deal of evasion by various authorities—to be in the custody of the Fort Adjutant. Objection was taken to the issue of the writ to any military person. There had been numerous precedents for such an issue, including the issue of such a writ in 1804 which resulted in the controversy of that year, which I have already referred to. The Judge was about to issue the writ when the Advocate Fiscal desired time to communicate with Government, undertaking that nothing would be done in the interval to change the state of the case. However in the interval a Regulation made by the Lieutenant-Governor was enacted which, in the language of Sir Hardinge Giffard, Chief Justice, "deprives the Court of all right of enquiring into the cause of any person being so detained whom the Governor, the Secretary, or the Deputy Secretary by his authority may have ordered to be imprisoned; it excludes the Court from even a sight of the person so imprisoned, and its operation extends to every human being in this Island or even on board a ship in its roads and harbours." I may add that it seems clear that the Advocate Fiscal was no party to this change in the state of the case.

When the inquiry was resumed, in a dignified judgment the Chief Justice declared: "To this regulation it is our duty to submit; it emanates from a competent legislative authority, and whatever may be our feelings upon the subject, we have no choice but to act under it as long as it is permitted to remain in force."

But the Chief Justice did not altogether refrain from all comment upon it. "It would ill become a Judge to make observations upon the spirit of any act of the Legislature. I may feel that I am myself as well as the poorest subject in this Island liable to its operation. I may feel this Regulation places Ceylon in the situation of being the only part of His Majesty's Dominions in which anything like such an enactment prevails, but I must acknowledge the power of the Governor to make such or any other Regulation whatever."

"Yet human power may find a limitation when it seeks to operate upon the mind, and when this Regulation undertakes to declare that to have been the law of this Island which the Chief Justice,.....the Advocate Fiscal,.....the whole stream of precedents and.....the uniform usage of the Supreme Court declare *not* to have been the law, it is no irreverence even of his high authority to suppose that it may fall short of convincing the understanding."

Thereafter the matter remained in abeyance in Ceylon until the Order in Council of the 1st November 1830 was received. This disallowed the Regulation made by the Lieutenant-Governor and upheld he right of the Supreme Court to issue Writs of Habeas Corpus.

Courts Prior to 1833.

Prior to 1833, besides the subordinate courts I have mentioned, namely the Provincial Courts and the Courts of the Sitting Magistrates, there had been other courts which it is not at the moment necessary to mention. These courts "differed among themselves in respect of their constitution, of their rules of procedure, and of the kinds and degrees of the jurisdictions which they exercised within the limits of their respective districts or provinces." In addition there were various Courts of Appeal besides the one Court of Appeal I have mentioned, which had the Chief Justice and the Puisne Justice among its members. The existence of several independent Appellate Judicatures tended "to introduce uncertainty into the administration of justice". Further, the system which I have described applied only to the maritime provinces and was not introduced into the Kandyan Provinces which had been brought under the British Crown.

Kandyan Courts.

Before the advent of the British there had been a regular hierarchy of courts in Kandy. The Supreme Judicial Power resided in the King and was exercised in Original Jurisdiction or in Appeal. The original jurisdiction was mainly exercised in cases between principal chiefs and officers of the Court, in suits between priests for principal temples or benefices, and in high crimes, including treason, rebellion, conspiracy, homicide, etc. Appeals also lay to the King from any individual against the decision of any chief in civil cases. Besides this jurisdiction of the King, there was the jurisdiction of the Chiefs. The highest Court was the Great Court or Maha Naduwa, which properly consisted of the Adikars, Dissaves, Lekams and Mohandirams, but latterly of all chiefs, especially those distinguished for their ability and judgment. This court tried matters civil and criminal referred to it by the King and matters originally instituted before it.

Subordinate to the jurisdiction of the Maha Naduwa was the jurisdiction of the Adikars in civil and criminal cases over persons subject to their peculiar authority. Thereafter there was a regular gradation of courts, (1) of the Dissaves, (2) of the Lekams, Ratemahatmayas and other chiefs, (3) of the Mohattales, Korales, Wanniyas and other headmen, (4) of the Liyenaralas, Undiyaralas, Korales and Aratchies in the Upper Districts, and (5) of the Vidans in the villages. At the bottom of the scale were the Gansabes or Village Courts.

I am indebted for these particulars to D'Oyly in his Sketch of the Constitution of the Kandyan Kingdom (1929 Edition, by L. J. B. Turner). D'Oyly's General Observations are of interest. He begins by saying that this system, "if it were purely administered, is apparently as well calculated to afford the means of justice as any which could exist in a despotic government," but he added that "corruption had unfortunately pervaded all its Branches." He mentions the following circumstances:—

(a) Justice in few cases was administered gratuitously. Apart from the customary fees, it was the practice to convey presents in private to the judge.

(b) Fines imposed did not belong to the Crown but were the entire perquisite of the person who levied them,

(c) The Kandyan chiefs had no stipends, and their tenure of office was precarious. There was accordingly a strong inducement to enrich themselves by every means within their reach.

(d) The chiefs themselves were required by the King to make extraordinary contributions and to pay fines, and usually recouped themselves from those under them.

(e) Many of the chiefs were men of "inactivity and inability," and not experienced in judicial matters.

(f) Liberty of appeal, even to the King himself, though it existed could often not be availed of by the subject.

(g) Fees had their influence on both civil and criminal cases.

As against these, D'Oyly puts the following:

(a) Cases tried in the presence of the King were ordinarily justly decided.

(b) The publicity of the proceedings in the Maha Naduwa prevented palpable injustice being done.

(c) The Village Courts or Gansabes usually functioned well.

(d) Where both parties were indigent there were the less abuses.

(e) Abuses were more frequent in Disavanies far from the capital.

Bearing these abuses in mind, one may turn to the conception of Judgeship which was entertained. It is in places strangely reminiscent of the oath still taken by Judges, and in others there is an echo of the wisdom of Francis Bacon. I quote from D'Oyly—

"The prosperity of him that perverteth Justice through Love, Hatred, Fear, or Ignorance shall diminish gradually as the moon in its wane,—but he that shall not deviate from Justice through affection or malice, through fear or from ignorance, will advance in prosperity as the moon in its increase. . . . It therefore behoveth the wise judge to act constantly according to the following rule of adjudication:—

"He that takes the Seal of judgment should not be proud and haughty, and should not be disdainful and disrespectful to the Priesthood and the King: he should not appear either pleased with the good nor displeased with the bad, but must maintain equanimity—he should not be talkative, or pronounce words of insignificance, but must utter only what is appropriate and necessary,—he should imagine no evil but be intent on doing good."

The rules of conduct for a Judge are further explained as follows: "Severity and Leniency should be evinced on befitting occasions. In the course of investigation he should be gracious and disposed to do good, and not be influenced with a desire of inflicting evil—he should

conduct the trial in serenity and mildness, but not in anger and intemperate impatience.—Whispering should not be tolerated in the Council nor sidelong looks,—nor must the judge wink or nod significantly at the suitors—nor should he by the shaking of his head or knitting of his brows allow his thoughts to be guessed—he should circumscribe his view to about the extent of a fathom and not extend his gaze to objects beyond that distance in any direction.—He should be pertinacious in examining the statements of interested persons and of those who are noted for cunning and falsehood, but it is proper that he should be affable and mild in interrogating those who are veracious and void of guile, and ignorance should be encouraged by kind words."

Except that it goes into too great detail as regards the deportment of the Judge, and perhaps that it indicates an undue leaning in favour of the priesthood and the King, this concept of Judgeship may still be regarded as the modern and the wise view.

This system of Justice was not superseded at once on the conquest of Kandy. It is true that the Kandyan King was eliminated, but among Kandyans themselves the old system of justice prevailed for a little longer.

Under the Proclamation of the 2nd March, 1815, "the administration of Civil and Criminal Jurisdiction and Police over the Kandyan inhabitants of these Provinces was to be exercised according to established forms and by the ordinary authorities," but Government had the inherent right to redress grievances and reform abuses and to interpose when necessary for that purpose. Further, all bodily torture and mutilation was prohibited and abolished, and sentence of death was not to be carried into execution except by the written warrant of the Governor to whom a report of the case had to be sent. Persons other than Kandyans, not being military persons, who resided in or resorted to these Provinces, were made subject to the Magistracy of the accredited agent of the British Government in all cases except charges of murder, which were to be tried by special commissions issued by the Governor. The Proclamation of the 31st May, 1816, however, put an end to the issue of commissions for the trial of charges of murder against non-Kandyans, and declared that "persons committing those offences cannot be tried by the Supreme Court till the Kandyan Provinces are annexed to or made Dependencies of that Settlement or Government, but that British Subjects may be proceeded against in England under the Act 33 Henry VIII c.23."

After the suppression of the Rebellion in 1817, a Proclamation was issued on the 21st November, 1818, which further modified the system of justice in the Kandyan Provinces as follows:—

(1) The Governor exercised both an original and an appellate jurisdiction. In prosecutions for treason, murder and homicide, the investigation was conducted by the Resident or the Judicial Commissioner, whose report came to the Governor for his determination. In civil cases, if the Resident or Judicial Commissioner differed from the majority of the assessors, the matter was referred to the Governor for decision. The Governor also had appellate jurisdiction from the

Resident and Judicial Commissioner in civil cases, and certain sentences in criminal cases required the confirmation of the Governor.

(2) The Judicial Commissioner held a Court with jurisdiction over civil cases not exceeding 100 rix dollars in value, and over petty offences: all other civil and criminal cases excepting treason, murder and homicide were tried by the Judicial Commissioner with two or more chiefs as assessors. Sitting with the Resident, the Judicial Commissioner tried matters criminal and civil in which a superior chief was a defendant. The Commissioner and Assessors were also a Court of Appeal from decisions of the courts of the Agents of Government, where the latter disagreed with the assessor.

(3) The Resident sitting with two assessors had jurisdiction coextensive with that of the Judicial Commissioner. The office of Resident was abolished in 1825.

(4) Agents of Government sitting alone had jurisdiction in civil matters—other than disputes concerning land—not exceeding 50 rix dollars, and over petty offences. Sitting with two assessors they had civil and criminal jurisdiction similar to that of the Judicial Commissioner, subject to appeal to the latter's Court.

(5) The Sitting Magistrate of Kandy had power over the town of Kandy and the adjacent districts. He tried civil cases, not concerning land, of not more than £22/10/-, subject to appeal to the Judicial Commissioner in certain cases. He had also a limited criminal jurisdiction. In 1829, the Magistrate was given two assessors.

(6) The jurisdiction of the Chiefs was limited and defined. They were given civil jurisdiction over such persons as the Governor assigned to them. Their powers of punishment were limited to 50 strokes with the open hand or 25 with a rattan, or imprisonment for 14 days. Disawas and other Chiefs having the Governor's Commission could punish with 25 strokes with the open hand or 7 days imprisonment. Mohattalas, Liyanaralas and Koralas could only inflict 10 strokes with the open hand or 3 days imprisonment.

Gansabes.

One other kind of Court existing both in the Maritime and the Kandyan Provinces may be mentioned, viz., the Gansabhavas or Gansabes, "the assemblies of the inhabitants of villages", which we now call the Village Tribunals. These assemblies were resorted to by suitors in small cases. But it seems clear that these Village Tribunals were not regarded as Courts but as bodies to whom persons submitted their differences for arbitration.

In this connection I may quote from D'Oyly's Constitution of the Kandyan Kingdom (p. 28). "This Court (i.e., the Gansabe) consists of an assembly of the Principal and Experienced Men of a Village who meet at an Ambalam or a Shady Tree or other Central place, upon the occurrence of any Civil or Criminal Matter, as Disputes regarding Limits, Debts, Petty Thefts, Quarrels, etc; and after enquiring into the case, if possible settle it amicably, declaring the party which is in fault,

adjudging Restitution or Compensation and Dismissing with Reproof and Admonition, their Endeavours being directed to Compromise and not to Punishment." Where, however, a Headman was a member of the assembly, a fine could on occasion be imposed. I think this description fits not only the Kandyan but Tribunals in other parts of Ceylon.

Charter of 1833.

The Charter of the 18th February, 1833, is the next great landmark in the growth of the Judicature, and it may be said to be the basis of our modern system. The Charter set out the anomalies and contradictions which existed as regards the various subordinate courts I have mentioned, and proceeded to abolish the Provincial Courts, the Courts of the Sitting Magistrates, the Court of the Judicial Commissioner, the Court of the Judicial Agent, the Revenue Courts and the Court of the Sitting Magistrate of the Mahabedde. The various existing Appellate Jurisdictions—that of the Appellate Court, of the Governor, of the Judicial Commissioner and of the Minor Courts of Appeal, and the Minor Courts of Appeal in revenue cases—were also abolished, and the right of the Governor to establish courts was taken away. It is interesting to note that the Gansabes were excepted from these sweeping changes, but the language of the Charter shows that the Gansabes were regarded not as courts but as bodies of arbitrators sitting to settle differences between those persons who submitted their differences to those bodies.

Supreme Court and District Courts.

The Charter proceeded to set up a new set of Courts. At the top it directed that there should be one Supreme Court, called the Supreme Court of the Island of Ceylon. This Court was to consist of and to be holden by a Chief Justice and two Puisne Justices. Three Judges were appointed by name in the Charter, viz., Sir Charles Marshall, Chief Justice, William Rough, Serjeant-at-Law, Senior Puisne and William Norris, Second Puisne Justice. The Supreme Court was to have a Seal consisting of the Royal Arms with a label surrounding it, with the inscription "The Seal of the Supreme Court of the Island of Ceylon." The Island was divided into three circuits, the northern, the southern and the eastern. The Kandyan Provinces were assigned to the eastern circuit. Each of the circuits was also to be subdivided into districts.

In respect of each district there was to be constituted a District Court of that district. The Court was to be holden by one Judge assisted by three assessors.

The Supreme Court was to be held at Colombo, except for the Circuits. The District Court was to be held at some convenient place within the district.

District Courts.

The District Courts were given the widest civil jurisdiction, irrespective of value, in all Pleas, Suits and Actions in which the party defendant was resident within the district, or where the act, matter or

thing on which the suit or action has been brought had been done or performed. This created a form of jurisdiction, limited as to territory but unlimited as to value, which is quite distinct from the English model. The District Courts were to have the custody of the persons and estates of Lunatics. The powers with regard to testamentary proceedings which had formerly resided in the Supreme Court were now given to the District Courts, who also were to take cognizance of all revenue cases. The jurisdiction of each District Court was to be exclusive. In the case of a difference of opinion between the Judge and the majority of the assessors, the opinion of the Judge was to prevail.

Besides this the District Court had a criminal jurisdiction, which however did not extend to crimes punishable with death, or transportation, or banishment, or imprisonment for more than 12 calendar months, or by whipping exceeding 100 lashes, or by fine exceeding ten pounds.

The District Courts have thereafter— with slight alterations— preserved the form given to them by the Charter of 1833. For example, in civil cases the assessors have been done away with, except in certain special cases; and in criminal cases they have ordinarily no right to impose penalties exceeding two years rigorous imprisonment or fines of over Rs. 1000/-.

Supreme Court.

The jurisdiction of the Supreme Court was also defined, and the existence of two District Courts, one with appellate jurisdiction and the other with civil and criminal jurisdiction, was abolished. The Supreme Court was constituted a Court of Appellate Jurisdiction, which was to have sole and exclusive cognizance by way of appeal of all civil and criminal matters which originated in the District Court. In addition the Supreme Court had an original jurisdiction for enquiring into and determining all prosecutions in respect of crimes and offences.

It was the intention of the Charter that the appellate and the orginal criminal jurisdiction of the Supreme Court should be exercised not only in Colombo but also on circuit.

In addition, the Supreme Court was empowered to issue Writs of Habeas Corpus, and Injunctions to prevent irremediable mischief before the party claiming the injunction could prevent the same by bringing action in the District Court.

The right of appeal to the Privy Council was provided for in civil cases, subject to this, viz., that before such appeal, the matter had to be brought by way of review before all the Judges collectively, and provided further that the value of the subject matter of the suit was above £500.

The Charter came into force and operation on the 1st October, 1833. There is no question but that the Charter finally fixed the shape and form of the Courts in this Island, viz., one Surpreme Court, not exercising an original civil jurisdiction but having a complete appellate and original criminal jurisdiction, and being the repository of the right to issue the Mandates and the High Prerogative Writs. On the other

hand, the District Courts had the widest civil jurisdiction, restricted it is true territorially, but with no limits as regards value, and also a limited criminal jurisdiction in less serious cases.

Courts of Requests and Police Courts.

But the framers of the Charter were too optimistic in thinking the District Courts would have the time to deal with the mass of litigation, and it was realised before long that relief had to be given to these courts. By Ord. 10 of 1843 it was decided that Courts of Inferior Civil Jurisdiction should be set up to ease the burden on the District Courts. These new courts were called Courts of Requests and the Judges of these Courts were termed Commissioners. These new courts were to be Courts of Record, with power to "hear and determine in a summary way and according to equity and good conscience" actions and suits for the payment and recovery of any debt, demand, damages or matter not exceeding five pounds in value, unless the matter in question related to the title of any land or tenement, or to anything by which the rights in future may be bound. The judgments of these courts were to be carried into execution by the attachment and sale of goods and effects or by the corporal arrest of the parties against whom judgment was given.

Eventually the jurisdiction of these courts was extended, and these courts could try not only cases of debt damage or demand but also hypothecary actions, actions for title or the right to possession of land, and partition actions. The monetary limit of the right was raised to Rs 300/-.

By the very next Ordinance (11 of 1843) relief was given to the District Courts as regards their criminal jurisdiction by the creation of an Inferior Criminal Jurisdiction. New courts were created called Police Courts presided over by Police Magistrates. These courts had power to deal with crimes and offences committed wholly or partly within their territorial jurisdiction, and not punishable with imprisonment for a longer period than three months or by fine exceeding five pounds, or by whipping exceeding twenty lashes. The appearance of Advocates and Proctors in these courts was limited.

The nomenclature of these courts has been altered in recent times, because it was considered that the word "Police" was apt to be misleading. These courts are now called Magistrates' Courts and are presided over by Magistrates. The limits of their jurisdiction have been extended, and a Magistrate's Court has power to pass sentences of imprisonment of either description for a term not exceeding six months, of fine not exceeding Rs.100, or whipping where the offender is under 16 years of age. (s. 15 of Cap. 16, Criminal Procedure Code.)

One other important function now performed by the Magistrates' Courts is what is called the Non-Summary Jurisdiction. Before prosecutions come up for trial before the District Court or the Supreme Court, the Magistrate has to hold a preliminary inquiry and take the depositions of the witnesses and decide whether the accused persons should be committed for trial before a higher court. If the Magistrate considers the evidence against the accused is not sufficient to put the accused on

his trial, the Magistrate will discharge the accused. Otherwise the Magistrate will commit the accused for trial before the appropriate court. This is an important safeguard for the accused, who is not only apprised of the charge but also of the evidence to be adduced in support of the charge in the higher court, and he has an opportunity of testing the evidence called in the trial court by the depositions recorded by the Magistrate.

As regards the limitation on the powers of punishment, there are several Ordinances which authorise Magistrates to impose penalties in excess of the ordinary limits laid down for these courts. A familiar Ordinance of this kind is the Excise Ordinance. Within recent years various Ordinances and Regulations for the defence of the Colony and for the effective exercise of the various controls which had to be set up in time of war have given to the Magistrates powers of punishment considerably in excess of their normal powers. The limitation originally imposed on the right of audience of advocates and counsel both in the Courts of Requests and in the Magistrates' Courts has been taken away.

Under the Ordinances of 1843 the right was established of bringing cases from the Courts of Requests and Magistrates' Courts under review to the Supreme Court. Later the right of appeal to the Supreme Court, subject to specified limitations, was conceded in the case of both these courts.

Procedure.

The procedure of all these courts is now prescribed. The Civil Procedure Code passed in 1889 still governs the courts of civil jurisdiction. This Ordinance is based upon the earlier Indian Civil Procedure Code which now has been replaced in India by the Act of 1908. In Ceylon, however, though there has been some tinkering with certain sections, there has been no attempt to introduce a new Code of Civil Procedure. There can be no doubt that amendment is needed here, and important amendments have from time to time been suggested by responsible persons, and it is to be hoped that a new Code will before long be made applicable to Ceylon. The Criminal Procedure Code introduced in 1898 still substantially governs courts of criminal jurisdiction, but this Ordinance has from time to time been amended in important particulars. For example, the right of committal to the higher court in non-summary cases now resides in the Magistrate, and not as before in the Attorney-General. This Code may be said to have functioned well.

Gansabes.

I have already referred to the "Gansabes" in connection with the Charter of 1833, where they were regarded not as courts but as bodies of arbitrators. These Gansabes continued to carry on some kind of existence till 1871. In that year (Ord. 26 of 1871) it was decided to provide for the establishment of village tribunals with a view to diminish the

expense of litigation in petty cases and to promote the speedy adjustment of such cases. For this purpose the Governor, with the advice of the Executive Council, was to establish village tribunals in each village or group of any chief headman's division, and to appoint a president for each chief headman's division. The president had power to try certain cases, but he had to be assisted by five councillors whose qualifications were set out as those entitling them to be Members of the Village Committee. The Village Tribunal so constituted had power to punish by fine not exceeding Rs. 20 any person convicted before it of certain specified crimes. The crimes included petty assaults, petty thefts, malicious injury to property, and cattle trespass. Besides this the Village Tribunal had a civil jurisdiction in cases in which the debt damage or demand did not exceed Rs. 20, and also actions for title to or possession of land where the interest in dispute did not exceed Rs. 20. But by the written consent of all the parties the tribunal had the right to try cases up to the value of Rs. 100.

This jurisdiction was applicable to all residents of the country other than Europeans or Burghers. But where it applied it was an exclusive jurisdiction, and no other tribunal was permitted to take cognizance of the cases. The point to remember is that the tribunals now set up functioned as Courts. Judgments in civil cases could be enforced by execution against the property of the person against whom judgment was given, and for that purpose the Fiscal had to levy execution. In criminal cases fines imposed were enforced in the same way as the Police Court enforced the sentence of fine.

There was however one fundamental change in the constitution of this body. It was no longer "a meeting of the inhabitants of the village" but a Court with a president and councillors. It is expressly laid down as the duty of the president and councillors "to endeavour by all lawful means to bring the litigant parties to an amicable settlement" and failing that to try the case. In the case of a difference of opinion between the president and the councillors, the opinion of the president was to prevail.

Later amendments have made but slight alterations in the constitution of these Village Tribunals. The civil jurisdiction remains where it was first placed. There has been a little expansion in the criminal jurisdiction to cover certain special ordinances, and to comprise the right of awarding not more than 14 days imprisonment in default, but the monetary limit of both jurisdictions remains fixed at Rs 20. The right of parties in civil cases to submit to these tribunals matters up to the value of Rs. 100 remains, but it has rarely, if ever, been invoked. The jurisdiction is still exclusive, and cases within the jurisdiction cannot be tried by any other court. The number of councillors associated with the president has been reduced to three. Europeans, Burghers and Indian labourers are persons excepted from the Ordinance.

Under the original Ordinance, reports of all proceedings in the Village Tribunals had to be sent to the Government Agent, who had the right to interfere. More recently the right of appeal to the

Government Agent was established with a further appeal to the Governor. In this respect the Village Tribunals are placed on a different footing from that of the other courts described, and may be regarded as standing somewhat outside the judicial structure. Proceedings in these courts are in the vernacular language, but subject to the approval of the Government Agent, the president may keep his record at his discretion either in English or in the vernacular language.

The Village Tribunals operate in purely country districts, and are not ordinarily given jurisdiction within the administrative limits of Urban Councils.

The presidents of these Tribunals have in the past been recruited generally from the same class of persons as became Chief Headmen, but within recent years there has been an increasing tendency to appoint practising lawyers to these posts.

Changes in District Courts, etc.

Certain changes in the constitution of the District Courts, Courts of Requests and Magistrates Courts may be noted. At first these Courts were manned by members of the Civil Service, although from fairly early times advocates of standing have been appointed to the more important courts. Within the last twenty years or so there has been an increasing tendency to appoint practising lawyers to the bigger courts, and Civil Servants have gradually ceased to function as Judges. In 1938, a Judicial Service was constituted for Ceylon, comprising all these courts, and no person was to be appointed to this Service unless he was an Advocate or Proctor of the Supreme Court of Ceylon who had practised as such for not less than six years. The various courts were graded into classes. There were however two important courts which continued to be presided over by Civil Servants, viz., the Jaffna and the Galle District Courts, and the transfer of these two posts had not yet been approved by the Secretary of State. But the exigencies of the war conditions resulted in the removal of these Civil Servants to administrative spheres of activity, and all the Courts are now presided over by practising lawyers, and the Judicial Service may be said to be in full operation.

Another important change was brought about by the new Constitution introduced through the Donoughmore Commission. Previously the District Judges and Magistrates had been working under the Colonial Secretary, or as he would later be called, the Chief Secretary. The fact that an executive officer of the Government should be in charge of the judicial department had been a matter of comment, and it had been suggested that some Judges may have had a bias in matters in which the Crown was interested. Under the Donoughmore Scheme the Judicial Department comprising the District Courts, Courts of Requests and Magistrates Courts was placed, not under the Chief Secretary but under the newly created

Legal Secretary, who was always a lawyer of experience. A further change introduced was that all appointments to the Judicial Service were made by a Judicial Appointments Board consisting of the Legal Secretary and two Judges of the Supreme Court, subject of course to the approval of the Secretary of State.

The Ceylon (Constitution) Order in Council, 1946, has created further changes. Under § 53 a Judicial Service Commission is set up, consisting of the Chief Justice who is the Chairman, a Judge of the Supreme Court, and one other person who is, or has been, a Judge of the Supreme Court. The appointment, transfer, dismissal and disciplinary control of judicial officers is vested in the Governor acting on the recommendation of the Judicial Service Commission. The members of the Commission other than the Chairman are appointed by the Governor acting in his discretion. No Senator nor Member of Parliament can be a member of the Commission. Any person who otherwise than in the course of duty influences or attempts to influence any recommendation or decision of the Commission or of any member of the Commission renders himself liable to a fine not exceeding Rs. 1000/- or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Summary.

To sum up, the Courts as now constituted consist first of the Village Tribunals, which are of course an interesting continuation of a very ancient system which had existed in Ceylon. There had been a change in 1871 when these tribunals ceased to be meetings of the inhabitants of villages, and became properly constituted Courts presided over by Presidents with the aid of a limited number of Councillors, and provided with a machinery for the enforcement of their orders. Their civil jurisdiction has a monetary limit of Rs. 20, and their powers of punishment in criminal cases are limited to a fine of Rs. 20 or 14 days imprisonment of either kind. The jurisdiction does not extend to the classes of persons already mentioned. The jurisdiction of these tribunals is exclusive and no other court has the right to try cases falling within their jurisdiction. As regards appeals, these tribunals stand somewhat apart from the other courts, the right of appeal being to the Government Agent, and from him to the Governor.

The other minor courts have more extensive jurisdiction. The Courts of Requests are purely civil courts. They have a territorial limit to their jurisdiction and a monetary limit of Rs. 300/-. They perform an extremely useful function in dealing expeditiously with the smaller cases. There is at present only one court which functions solely as a Court of Requests, that is the Court of Requests of Colombo. In other parts of Ceylon the work of these Courts of Requests is generally shared between the District Judge and the Magistrate, the latter dealing with the cases of smaller monetary value, usually those under Rs. 100 in value.

Another important minor court is the Magistrate's Court with criminal jurisdiction only. It functions as a court of first instance in the trial of certain specified offences, with a limit as regards territory

and also as regards its powers of punishment. Ordinarily it has no power to impose penalties in excess of six months imprisonment of either description or a fine of Rs. 100. But there are certain crimes in respect of which much higher penalties can be imposed. The second function of the Magistrate's Court is to act as a court of inquiry into all cases which are to be committed for trial to the District Court or to the Supreme Court. The Magistsate after inquiry may either discharge the prisoner or commit the case for trial before the higher court. These Magistrates' Courts have a vast amount of work to do, and they play a great part in the administration of criminal justice, more particularly in the big towns like Colombo. From the Courts of Requests and the Magistrates Courts, appeal can be taken to the Supreme Court.

The most important however of the original courts is the District Court. As has been pointed out, it is territorially limited both as to civil and criminal jurisdiction. Its criminal jurisdiction is also limited to certain specified offences, and it has ordinarily no power to impose penalties in excess of two years rigorous imprisonment or fines of Rs. 1000. But on the civil side the jurisdiction of this court is unlimited as regards monetary value, and it has the power to try cases of the greatest importance. In the District Court of Colombo, for example, and in a few other courts, there have been instances where the monetary value of the case was in the region of a million rupees, and in addition points of the greatest intricacy both of law and of fact have arisen for determination by many of these courts. This is hardly to be wondered at, for in this Colony there are five systems of law to be administered.

First is the Roman Dutch Law, which may be regarded as the law generally applicable to the maritime provinces, except where it has been abrogated or amended. Next the English Law has been made applicable to Ceylon as regards maritime and commercial matters, and many Ordinances have been introduced on English models; for example, those relating to bills of exchange, cheques and promissory notes. Then there are three systems of law relating more particularly to rights of inheritance and also to other matters, viz., the Muslim law applicable to Muslims, the Kandyan law applicable to Kandyans, and the Tesawalamai applicable to the Tamil inhabitants of the Province of Jaffna. These laws are personal to the classes I have mentioned. In addition to these five systems of law, the District Courts have the duty of administering the various Ordinances which have come into effect in this Colony. The District Courts may accordingly be regarded as a very important part of the judicial structure.

Supreme Court.

The most important Court in Ceylon is the Supreme Court of the Island of Ceylon. It now consists of nine Judges, namely the Chief Justice and eight Puisne Justices, appointed to their offices by Letters Patent issued under the Public Seal of the Island. The Seal of the Court bears a device and impression of the Royal Arms with an exergue or label surrounding it with the inscription, "The Seal of the Supreme Court of the Island of Ceylon."

Under the Ceylon (Constitution) Order in Council 1946 which has just come into force, the Chief Justice and Puisne Judges and Commissioners of Assize are appointed by the Governor acting in his discretion. Every Judge of the Supreme Court holds office during good behaviour, and cannot be removed except by the Governor on an address of the Senate and the House of Representatives. The age of retirement is fixed at 62 years but the Governor may permit another 12 months of service.

The Supreme Court exercises

(1) an original criminal jurisdiction for the inquiry into all crimes and offences committed throughout the Island, and for hearing all prosecutions. In practice, it deals only with the most serious offences.

(2) an appellate jurisdiction for the correction of all errors committed by any original court, and sole and exclusive cognizance by way of appeal or revision of all civil suits and criminal prosecutions and other matters arising in the original courts.

The original criminal jurisdiction of the Supreme Court has no territorial or other limit, and is applicable throughout the whole of Ceylon. It can be exercised either by any of the Judges of the Supreme Court or by a Commissioner of Assize specially appointed for a particular criminal session. It is interesting to note that this criminal jurisdiction has existed from the early days of the British period. This criminal jurisdiction is exercised in the various Circuits appointed. At present provision is made for the Western Circuit, the Midland Circuit, the Northern Circuit, the Southern Circuit, and the Eastern Circuit. It may be interesting to note that the Western Circuit is held at least four times a year, the Midland Circuit at least three times a year, and the other Circuits at least twice a year. In practice the Western Assizes continue throughout the year, including the periods of Vacation, and for the most part of the time there are two parallel courts sitting. The Midland and the Southern Assizes also take up a great deal of time and run for about half to three quarters of the year, or sometimes more

The Appellate Jurisdiction of the Supreme Court must ordinarily be exercised in Colombo, and in practice is never exercised elsewhere. It is of interest to remember that originally the Supreme Court and the Appellate Court were distinct, and that the merger of the two courts did not take place until the Charter of 1833 came into force. Appeals come to the Supreme Court from all the District Courts, the Courts of Requests, and the Magistrates' Courts, and from special tribunals set up by Ordinances.

In addition to the right of determining appeals, the Supreme Court has the widest powers of correcting all errors committed in the original courts by way of revision.

Matters coming up for a decision from the District Courts are heard by two Judges of the Supreme Court, and matters from the Courts of Requests and the Magistrates Courts before one Judge. Where the Judges are divided in opinion, three Judges may be called together to decide the matter, and the views of the majority prevail. The Chief Justice has the power of placing any matter either before the whole Court or before five or more Judges.

The original criminal jurisdiction and the appellate jurisdiction are the two most important functions of the Supreme Court.

The original civil jurisdiction of the Supreme Court—except for the short-lived experiment in the Charter of 1810—had been a limited jurisdiction. But even this was taken away by the Charter of 1833 and was never revived.

The Supreme Court has been invested with the right to issue what are known as the Mandates and the High Prerogative Writs. I have already referred to the Writ of Habeas Corpus, exercised from the early days of British Rule, and the controversy which was finally settled in 1830. Thereafter the right to issue these Writs was not in question, and the right was embodied in the Charter of 1833 and later in the Courts Ordinance 1 of 1889. This Writ of Habeas Corpus is a mandate to bring before the court (a) the body of any person to be dealt with according to law, and (b) the body of any person illegally or improperly detained in public or private custody. I do not think it is generally realised how frequently this writ is invoked. At one time, and probably even today, it was unusual for a working day to pass without at least one application coming up in the form of a petition. It must be confessed however that the vast majority of these applications were misconceived; frequently they were asked for by husbands whose wives had left them and gone to their parents and were threatening to take maintenance or divorce proceedings, and there were a sprinkling of cases where parents had sent out on domestic service their young children and were unable to recover the agreed wages from the employers. However there was a residue of genuine applications for this writ, and some of them were matters of importance.

There are a number of other such Writs which are asked for in greater or less degree, namely—

(1) Mandamus, to enforce the performance of some duty of a public nature in respect of which there is no other specific legal remedy.

(2) Quo Warranto, which is the proper remedy where there has been an usurpation of an office of a public nature created by the Crown or by statute.

(3) Certiorari, whereby the Supreme Court examines and sets right the proceedings of any inferior court or statutory authority having judicial or quasi-judicial functions.

(4) Procedendo, whereby the inferior court is commanded to proceed with a case before it.

(5) Prohibition, which is granted to restrain a court from acting without jurisdiction or in excess of jurisdiction.

This jurisdiction of the Supreme Court is an important part of its duties. These mandates may be issued against any District Judge, Commissioner, Magistrate, or other person or tribunal.

It may further be noted that the Supreme Court has been constituted a Colonial Court of Admiralty, and exercises Admiralty Jurisdiction similar to that exercised in the High Court in England, for instance, proceedings relating to Prizes come before the Supreme Court.

In addition the Supreme Court deals with Election Petitions. These matters come up from time to time and take up a great deal of the time of the Judges who try them.

Since 1936 a special jurisdiction has been conferred on the Supreme Court to try cases of dissolution of marriage of persons not domiciled in Ceylon. This jurisdiction applies only to persons domiciled in England or in Scotland, provided that the petitioner resides in Ceylon and the place where the parties last resided was Ceylon, and provided that the marriage was solemnised in Ceylon.

Court of Criminal Appeal.

There was for a long time no right of appeal from the verdict at the criminal trial before the Supreme Court, although a matter of law could be brought up in review, on a certificate either from the Trial Judge or from the Attorney-General. Eventually it was decided to set up in Ceylon a Court of Criminal Appeal on the same basis as the English model. This was carried into effect by Ordinance 23 of 1938, by which a Court of Criminal Appeal was set up, and the Chief Justice and the Puisne Justices were to be Judges of that Court. The Court was to consist of not less than three Judges, and the Trial Judge was not permitted to be a member of the Court. The Chief Justice, if present, and in his absence the senior member of the Court was to be President of the Court. The opinion of the majority of the Court was to prevail in the case of a difference of opinion. Ordinarily there was to be only one judgment either by the President or by a member of the Court nominated by the President.

Any person convicted at an Assize Trial had the right to appeal

(a) against his conviction on any ground of appeal which involved a question of law alone; and

(b) with the leave of the Court of Criminal Appeal, or upon a certificate of the Trial Judge, against his conviction on any matter involving a question of fact, or any question of mixed law and fact, or any other ground which the Court regarded as a sufficient ground of appeal; and

(c) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law, for example the death sentence for the offence of murder.

The Court of Criminal Appeal has the power to dismiss the appeal, or to allow it and quash the conviction and enter judgment of acquittal, or if they think fit to order a new trial.

The Court of Criminal Appeal first sat on the 3rd of June, 1940, and since that date it has sat every fortnight for one or more days to hear criminal appeals from Courts of Assize. The Court has either set aside or interfered with an appreciable number of convictions and sentences, although the vast majority of appeals and applications for leave to appeal were unsuccessful. The right to appeal or to apply for leave to appeal has been eagerly availed of by convicted prisoners. I do not know of any conviction for murder which has not been brought before the Court of Criminal Appeal, and there has been a great and increasing tendency for convictions for other offences than murder to be brought up. I think this Court has played a very important part since its inception, and on one occasion a body of seven judges assembled to decide a controversial point of law. On this occasion the practice of having only one judgment was varied, and a number of judgments were delivered.

Privy Council.

The survey of the judiciary in Ceylon will not be complete without a reference to the highest of the tribunals dealing with Ceylon litigation. I have referred in passing to the right early established of allowing appeals from the Supreme Court to the King in Council. In 1833 the Judicial Committee of the Privy Council was set up to deal with litigation coming from the Empire. The wide-flung jurisdiction of the Judicial Committee has been well described by Professor J. H. Morgan in the Rhodes Lectures delivered in 1927. The cases he refers to were picked out from the Reports of the last 20 years before 1927.

"Where else indeed does one plunge so deeply in the stream of life? Where else does one encounter in so rich a diversity the unfolding panorama of man's destiny on this earth? Turn over those hieratic pages and you find their Lordships one day discussing in a marriage case from Quebec the decree of the Council of Trent and a Lateran Council of the XIII. Century, and you are back in the Canon Law of the Middle Ages. Another day and they are exploring the text of a Brahminical Jurisconsult forbidding, many centuries before the birth of Christ, any man to give or take an only son for adoption—and you are carried far back to the twilight of ancestor worship. Yet a few pages and you are carried forward by the sweep of centuries to the Indian Evidence Act and the effect of the doctrine of estoppel on a kinsman who has first accepted and then repudiated the introduction of an infant stranger into the joint family which is as old as time. Another day and their Lordships are deciding whether that strange and inscrutable juristic person, a Hindu idol, who has fallen among quarrelsome guardians, shall in his fallen condition have appointed unto him a 'next friend'. Again their Lordships are called upon to decide whether a declaration and injunction shall be made and issued against Bella Jones, converted

to the Zoroastrian religion, for attempting to trespass among Parsees of pure Persian stock within the sacred precincts of the Temple of Fire at Rangoon. Or turn to the Western Hemisphere and you will find a debate as to the usufructuary rights of aboriginal tribes over Nigerian lands, which know nothing more modern than that communal ownership which is older than the origin of private property in land. Yet a few years and their Lordships are investigating in a case from Rhodesia whether Lobengula, in making a vast concession of native lands to an European adventurer, was acting as a 'trustee' for his tribe—in other words whether he was, as Maitland said of Maine's refined patriarch of the early Roman law, 'a savage in evening dress.'

"Turn to appeals from the Straits Settlements and you will discover that British subject though you be, you cannot, if you are of Chinese descent, with impunity allow a lady to visit your house and offer your wife a cup of tea in your absence, or, on your return home you may find that you have acquired a 'secondary wife' with disturbing effects, if not on your peace of mind, at least on your intestacy. In one sphere of the Privy Council's appellate jurisdiction you may, if you are a Mohamedan, be the husband of many wives; in another, if in addition to the privilege of being a woman you are a Nair, you may become the wife of many husbands—if indeed you are a wife at all, for a Malabar ancient usage is dying hard, and there, as in another place, there is neither marrying nor giving in marriage. And as with marriage, so with divorce. If you are a member of a domiciled Jewish community in Egypt and have obtained a divorce in a Court of Rabbis, the Privy Council will—or until lately would—grant you a declaration that the divorce was binding, and in doing so will discourse of the Levitical Law and of Moses. For the British Empire knows much of personal law, just as in those days of the later Roman Empire when men of each race 'lived their own law'. Go to Ceylon and you will find—the Privy Council Reports will tell you as much—that it is dangerous to make a promise in a generous mood, and still more dangerous to break it, because in Roman Dutch Law they have quite different notions of what constitutes 'consideration' from our own. Settle in Quebec and you will find that you act at your peril to a degree unknown to English law, for you are there governed by French law in which the mere occurrence of an accident may impute to you a want of reasonable care, and the onus is on you to refute it."

I have quoted this passage at some length not only on account of its witty and eloquent language but also because it shows how small a part Ceylon matters play before the Privy Council.

It would not however be sufficient to deal with the Ceylon tribunals without a reference to this final tribunal in important cases. In Ceylon no right of appeal lies in any criminal case to the Privy Council, and special leave to appeal is granted only on rare occasions by the Privy Council. But the right to appeal to the Privy Council

from final judgments in civil cases is established where the value of the matter in dispute is not less than Rs. 5000/-, and in certain other cases of great general or public importance the Supreme Court may give the right to appeal, and the Privy Council itself may always grant special leave to appeal.

One peculiarity of the Privy Council may be mentioned. Only one single judgment is delivered by the Court. To quote a witty writer—"There may be considerable diversity of opinion, doubts, hesitations and dissent behind the curtain in Whitehall. But when the curtain goes up one Judge delivers the opinion of the Court and it is law. It does not sprinkle like a garden hose, it hits like the hammer of Thor." There is a good historical reason for this unity of judgment. For as Lord Dunedin said—"In the Privy Council we are not Judges, we are advisers of the King, and a Privy Council so-called judgment is nothing more than that we humbly advise His Majesty to do so-and-so. Of course it would be ridiculous to have five persons advising His Majesty each in a different way, and therefore there is that, so to speak, historical reason for the Privy Council judgment being delivered as it is."

The Judicial Committee, however, has been described by Viscount Haldane as "the supreme judiciar of the Empire." But for a Court of such eminence there is a marked absence of formality. As Viscount Haldane puts it—"Few people, even of those who dwell in London, turn into Downing Street to see it sitting. And yet it is one of the King's Courts and is open to every citizen of the Empire and to any one else who chooses to walk in. There the visitor may see advocates of every shade of complexion and with the most varying accents pleading or waiting to plead .... All these may be there confronting five elderly gentlemen, without wigs or robes, but seated round the horse-shoe oaken table of the Judges, and with the marks of years of immersion in legal contemplation written on their brows. It is indeed an unusual spectacle."

A. E. K.

CEYLON IN THE SIXTIES.

(Continued from our last issue).

The long and patriarchal administration of the Northern Province by P. A. Dyke, which began on 1st October, 1829, came to a close with his death on 9th October, 1867. The office was then held by H. S. O. Russell for two years, after which there was inaugurated the administration of W. C. Twynam, which, though falling short of the previous record by 11 years, partook of most of its characteristics. As Russel's administration was of short duration, he did not leave his mark on the Province in the way his immediate predecessor and immediate successor had done. He had as his assistant Joseph Brabazon Pilkington, who was acting for George William Templer, a man of short stature but of high capacity as an administrator. Robert Stott Pargiter, the son of a Methodist Minister who afterwards joined the Anglican Church, was extra assistant to the Government Agent.

The Head Clerk of the Kachcheri was Ambiapager Ellayatamby, of whom it was said that "during the long period he had been in employment (39 years), he seldom gave offence to any of his superiors or brother clerks". Among the other clerks were Charles Henry Theodore Koch, James Francis Koch, and Caspar Henry George Leembruggen. Three clerks were designated respectively "Salt Writer", "English Writer" and "Tamil Writer". The "Grain Establishment" called for a fairly large staff, comprising among other officers, a Head Accountant, two English Accountants, two Tamil Accountants and a Tamil "Reader". The Islands of Jaffna were not important enough to be looked after by a separate Maniagar—spelt *Maniyakara* in those days.

John Henry Toussaint was a member of the Provincial Road Committee, among the other members being Charles Morrison, Agent of the Oriental Bank Corporation, who is described as "a gentleman of genial manners and charming personality," and Wyman Catheravelupillai, who afterwards had a creditable career as Police Magistrate, Kayts. Charles Strantenberg, Proctor, was a member of the District Road Committee. Joseph Grenier, in his Memoirs, acknowledges with gratitude the kind assistance he received from this gentleman when he started practice in Jaffna. "He had a large business and briefed me in several big cases. He was never tired of speaking to me about my father, who had shewn him great kindness when he was a friendless youth. He was a quiet well-mannered man and a good friend".

The Customs had Ferdinand Adolphus Maartensz as 1st Clerk at Jaffna, and Henry Frederick Speldewinde as Sub-Collector at Kankesanturai. John Edward Nolan, a descendant of the famous Nolan of Delft, was Secretary of the District Court, with Bernard Edward Grenier as 1st Clerk and John Loos as 2nd Clerk. John

William de Rooy was 2nd Clerk of the Police Court. Hawtrey Thwaites, who afterwards became Registrar of the Supreme Court, was Deputy Queen's Advocate, the Chief Clerk and Interpreter—note the word "*Interpreter*"—being Henry James Kriekenbeek.

There were only three Advocates in Jaffna—Thwaites, Catheravelupillai and Gould, whose later career belied the promise of his early years. Among Proctors we find the names of Anderson, Maartensz, Toussaint, Rulach and Koch. A Tamil Proctor, who afterwards rose to distinction, was T. M. Tampoe.

The Survey Department was represented by George Benjamin Capper, who married a Miss Leembruggen, and who later met with a violent death at Batticaloa. Dr. James Loos was Colonial Surgeon, and had as assistant Dr. Arnold Henry Toussaint. That the Burghers of that day had a working knowledge of Tamil is shewn by the fact that two of them, Simon John Speldewinde and John Koch, were Registrars of Lands, for which a knowledge of the vernacular was an essential qualification.

Rev. F. C. LaBrooy was Colonial Chaplain of the Church of England, while the Dutch Presbyterian Church also was represented. Among the Elders and Deacons we find the names of Margenout, Leembruggen, Toussaint, Kriekenbeek and Koch. The other Missionary bodies were the Church Missionary Society, the Wesleyan Mission and the American Mission, whilst the Roman Catholics also were well established.

The Oriental Bank Corporation carried on business on a small scale, Charles Morrison being the Agent, assisted by two clerks, Peter Frederick Toussaint and Ellis Gladwin Koch, both of whom afterwards joined the Railway Department and rose to responsible office. John Henry Toussaint and Bernard Adrian Toussaint carried on business as General Merchants, while James Peter de Hoedt was Auctioneer. Jaffna had a paper, the *Jaffna Freeman*, the Proprietor being Solomon Johnpulle, and the Editor John Charles Henricus.

Unlike most other Friend-in-Need Societies, the one in Jaffna ran a Hospital, which was in existence up to our own times, when it was replaced by a Government institution. It was on a modest scale, the receipts in 1867 being £650 and the expenditure £455. The number of indoor patients was 411, and the number of outdoor, 5476.

It is refreshing to see the prominent part taken by the Burghers in the literary activities of the town. Dr. James Loos was Secretary of the Library and Francis Michael Toussaint was Treasurer. Six out of eight members of the Committee were Burghers, these being James Henry Toussaint, the Rev. Charles Koch, John Edward Nolan, Bernard Edward Grenier, Charles Stratenberg and Charles Henry Thedore Koch.

The Assistant Government Agent of Mannar was Edward Newnham Atherton, a member of a family that had settled in Batticaloa

and acquired large landed interests there. Patrick de Hoedt was Chief Clerk of the Kachcheri, while the Shroff bore the impressive name of William Solomon Hamilton. The Sub-Collector of Customs at Pesalai, a small port a few miles off Mannar, was Gerret Leembruggen. The District Court was a small institution, with John Frederick Honter as Secretary, assisted by a clerk and an interpreter. Two Proctors sufficed for this Court, one of them bearing the name of William March. John Werkmeister was clerk in the Public Works Department, and the Telegraph Office was manned exclusively by Burghers bearing the names De Jong, Liversz, Jan and Bulner. John William Claasz was Assistant Colonial Surgeon in medical charge of the District, and the Rev. Robert Edwards looked after the spiritual wants of the Protestants.

The Anuradhapura District, then known as Nuwarakalawiya, was attached to the Northern Province, and was in charge of an Assistant Government Agent. The Kachcheri was a small one, the staff consisting of a Head Clerk, a Second Clerk, a Shroff, an Interpreter Mudaliyar and a Muhandiram. The Secretary of the District Court was Henry Charles Brechman. There were only three Proctors, two of them being John Justin Christoffelsz and William John Stork, the latter of whom afterwards became Deputy Registrar of the Supreme Court. Mullaitivu was even more insignificant than Anuradhapura, there being no resident Proctors. Kayts (spelt Kaits) had James Gerret Toussaint as Preventive Officer, and John VanZyl was Sub-Collector of Custom of Point Pedro, with Charles Leembruggen as Landing Waiter at Valvettiturai.

Unlike the maritime districts, Kurunegala did not offer many attractions to the Burghers, although a fair number of them found places in the Government offices and professions. Charles Barber was Chief Clerk of the Kachcheri, with John Cornelius Ebert as his assistant. The office of Secretary of the District Court was filled by James Valentine Daniels, the other clerks being drawn from the families of Ferdinand, Jobsz and Jansz. William Henry Herft, who afterwards rose to be Chief Clerk of the Attorney General's Office, was clerk to the Deputy Queen's Advocate. Two members of the Felsinger family were in the Fiscal's Office and a third was a Notary Public, who combined his notarial functions with that of coach proprietor.

Chilaw, although not so important as now, had a fair number of Burghers. Bartholomew Crispeyn was Secretary of the District Court and Bernard VanGunster was Deputy Fiscal. The roads were in charge of Frederick Roosmalecocq as Superintending Officer, and Xenophon Daniels lent a distinction to his office as a Sub-Assistant Surveyor by his unusual Christian name. Among the eight Proctors were Nathaniel Cooke and James Lemphers.

Puttalam, too, had its Burghers. Samuel Vincent Godlieb was Head Clerk of the Kachcheri, with Michael Alfred Felsinger and Reuben Anam (the latter of uncertain nationality) as his assistants.

Francis Robert Bartholomeusz, father of our Dr. Frank Bartholomeusz, was clerk to the District Road Committee. He finished up his career as Chief Clerk of the General Treasury. Dr. W. G. Rockwood, who was afterwards to attain fame as one of Ceylon's leading physicians, was in medical charge of the District. Robert Daly Ormsby, later Director of Public Works, was Superintending Officer, with Joseph Kreltszheim as his clerk.

Kalpitiya at that time was a more important place than it is now. It had a Police Court, of which Edmund Edward Godlieb was the Clerk, and Hendrick Lodewyk the Interpreter. Timothy Slegers was Native Writer. The Sub-Collector of Customs was Elijah Rockwood, believed to be the father of Dr. Rockwood. The town boasted two shops, owned respectively by Conrad Arnold Schubert and Mrs. John Cornelis Van Sanden. More enterprising than his brother practitioners, John Edward Nicholas, Proctor of Chilaw, took Puttalam and Kanitiya also in his stride.

The Eastern Province had at this period Trincomalee as its headquarters, the Government Agent being John Wheler Woodford Birch, who was later transferred to Malaya, where he met his death by assassination. William Jansz was Head Clerk of the Kachcheri, other clerks being John Hunter, James Bernard Kahle and John Henry Meerwald, the last-named eventually becoming Head Clerk of the Batticaloa Kachcheri. The Secretary of the District Court was George Edward Colomb, whose son, James Bernard, filled in due course a similar appointment in Batticaloa. Of the three Proctors in Trincomalee, two were Burghers—John George de Vos and William Francis Redlich. The Telegraph Department, described as the "Electric Telegraph Office", was in charge of Vincent William van Dort.

The Assistant Government Agent of Batticaloa was Alexander Young Adams, who, beginning life as a coffee planter, became Director of Public Instruction, acting once as Auditor-General and ended up by marrying the Governor's daughter. Cornelius Henricus Cadenski, a member of a family that is now almost extinct, was Head Clerk of the Kachcheri, while another bearing the same name was Superintendent of Minor Roads. John Edward Roosmalecocq filled the office of Sub-Collector of Customs. Frederick Struys, who afterwards became Secretary of the District Court, was clerk to the Deputy Queen's Advocate. The Fiscal's Office was a small affair, with Thomas Wambeek as clerk, assisted by a translator. John Lucas Wambeek filled the post of Jailer.

The Bar consisted of four Advocates and six Proctors. The senior Advocate was Denis Purcell, who had a chequered career. Walter Dionysius Drieberg, who afterwards served with credit for many years as a Crown Counsel, had just started practising in Batticaloa. Tibertus Roelofsz, admitted as a Proctor in 1840, was still going strong, and three other Tamil Proctors of note, who were still in active practice up to our own day, were Jonathan Crowther, Robert Kadramer and Jabez Bunting Swaminader. The Burghers

were represented in the Survey Department by Henry Herman de Koning and George William Collette. The clerk to the Superintending Engineer, Public Works Department, was Seraphim Outschoorn, who was known in later days as Chief Clerk of the Loan Board. Like Jaffna, the Batticaloa Friend-in-Need Society undertook the care of the sick and established dispensaries for the purpose. The dispenser was Alexander Nimrod Collette.

J. R. T.

A DIP INTO THE PAST.*

Time is ever ringing changes. Trends of thought and social customs will vary as long as the world itself lasts. Those who think on the past as sentimental twaddle, have the weight of opinion of civilized society, the world over, against them. Without knowing the past we cannot assess the present.

Beginning with our ancestors in warring times, we see the dominion of the Netherlands in Ceylon being extended. Galle, Kalutara, Colombo, then Mannar, and lastly Jaffna, have been occupied in turn. The entire maritime zone of Ceylon is in their hands, and Colombo, owing to its position and importance, has been made the capital. We see their language, their manners and customs, their laws and their religion and their architecture being gradually introduced. The maritime towns become essentially Dutch in character, and are filled by austere colonists liable to make all the mistakes of people who must learn and were learning their lesson, slowly but surely.

The chief event to interrupt the even tenor of their lives was the arrival, twice a year, of the spring and autumn fleets laden with goods from Holland. Those were the days when daylight hours were given to toil in unloading the ships, and loading them anew with cinnamon and arrack, with pepper and other spices; the early night hours were spent in merriment. Great and happy gatherings pressed round dumpy and ponderous tables, until the luscious eatables in dishes and the liquid beverages in jugs slowly decreased, and the wise ones in the party gave the signal for dispersing to their pleasant homes not far away.

The capitulation of Colombo to the British brought about a sudden change. We see the distressing picture of large numbers of the political and commercial servants of the Dutch East Indies Company leaving these shores. Four years thereafter barely 900 remained. These Burghers—note the term, for all the Dutch in

*An account compiled by a senior member of the Union and read on Founder's Day.

Ceylon were now Burghers since there were no Company Servants—were scattered over the principal stations on the coastal belt, the majority being in Colombo.

The position of our Dutch ancestors at this time was not an enviable one. Their services were not used to any large extent in the new administration. Those who were engaged in private trade and occupations were equally handicapped. The transition from power to impotence, from affluence to limited means, was keenly felt by them. Some who had large houses rented them to the more opulent British residents, and moving into smaller ones lived on the difference in rent. By rigid and meritorious economy they nevertheless maintained a decent and respectable place in society.

Even in those days the Burghers had their detractors, one of whom was Captain Percival, the writer of the first book on Ceylon published in the early British period. He could see nothing good in them. He pictured the men as dull and indolent, and only fond of eating, drinking and smoking, the woman as coarse and corpulent. To counter-balance this highly coloured impression, the grave Cordiner writing shortly afterwards of the ladies of Dutch parentage born in Ceylon, showed how easy it was to fall under the spell of their charms. He described them as "comely and possessing a great deal of that artless vivacity and unconstrained deportment which accompany innocence."

When the Peace of Amiens finally settled that the British should retain possession of Ceylon, a slow but steady stream of emigration continued up to the year 1807. In this year the concession offered to the Burghers to avail themselves of a free passage to the Dutch Indies, without, however, any assurance of employment, was suspended. Those who remained realized that their only hope of advancement under the British lay in a knowledge of the English language. Twenty years after the capitulation, their position was summed up as "an element of stability and strength to the newly acquired British Colony". They had qualified to fill both the minor and higher offices in every branch of work. Very nearly the entire body of clerks was recruited from their ranks. They held the higher posts in the judiciary and the engineering branches. The first Advocates and Proctors were Burghers. Thus, a long period of misunderstanding and resentment, of suspicion and malice, came to an end. It left the Burghers on terms of amity with the new rulers and the other indigenous communities in the Island.

Although by this time our ancestors had begun gradually to adopt some of the manners and customs of the British, they continued for many years to reside in their old Dutch houses in the Pettah. Let us not too hastily judge their quaint and primitive existence by present day standards. The teaching of science has imported into our times a movement and bustle which they never knew. As we take a glimpse at their leisurely life, let us remember that the time which perhaps hung rather heavily on their hands had to be occupied by simpler forms of enjoyment than the lively social intercourse which we associate with the pleasures of life.

Let us imagine ourselves taking a peep into one of these Dutch houses in the Pettah of Colombo, in the early British period. From the roadway we step into an open paved verandah called the *Stoep*. It is protected by a wooden railing, used chiefly for resting the arms while carrying on a conversation with neighbours across the street. We pass through a wide door set in massive framework, and surmounted by a fanlight filled in with a huge cipher monogram, into a lobby or passage. This they called the *Kleine Zaal*. The two doors on right and left open into the *Slaap kamers* or bed-rooms, while the one facing us leads into the *zaal* or great hall. This is a wide and lofty room, stretching nearly the whole breadth of the building. Here we see a long oval dining table of four square pieces with high backed chairs arranged round it, and a variety of other heavy furniture against the walls, what-nots with heavy Delft crockery, cellarets and side-boards and settees made of calamander or satin wood and ebony, bound with bands of copper. There are many chairs arranged against the walls, of all shapes and sizes, some broad and roomy, others small and low. It is the living room of the family. The floor of the entire house is paved with large bricks, each framed in lines of white lime, called a *custuré*.

Leaving the *zaal*, we pass into the verandah called the *halve dak*, which runs on three sides of a rectangular compound, flanked on two sides by rows of rooms. In the compound there stands a well, with its masonry wall, cross-beam and pulley. At the further end of the boundary wall, a clump of plantain trees, a bush of *rampe* and a *carapincha tree*, thrive on the moisture of kitchen-washings, while a few beds of flowering plants and bowers of stephanotis and mougrine add colour and fragrance.

We have no time to examine the rooms, for the master of the house and *moevrouw*, who are now in the *kleine zaal*, claim our notice. *Mynheer* is about to leave for the office. The horse and carriage stand at the door. The former was to be led through the house, for there is no other way to get to the stables at the back, and the carriage has been wheeled out from the *stoep* where it is parked when not in use.

There enters Champaca, a slave-girl, with the children, who have come to see their father off. The boy wears an *opperbroek* with all the separate advantages of skirt, jacket and pantaloons in one, made of material whose durability and quality his mother has tested by sundry manipulations. No garments, according to the custom of that utilitarion age, were ever intended to be worn for 12 months and then laid aside as unsuited to the fashion of the day. Life, set in this key, and under similar conditions, continued until nearly the end of the last century.

There are just a few here, may be, who can recall childhood days spent in those Dutch houses in the Pettah, when the charities of domestic life were practised and the social virtues were cultivated with unobtrusive simplicity. Social calls, usually made

between 6 and 7 o'clock in the evening, were neighbourly calls free from the formalities which the fashion of our day has created. The ladies usually gossiped in the great hall. *Zuiderbrood* and *Franche koekjes*, *pentifritos* and *Jaakefritos*, or fried bread fruit, and other confections were passed round, followed by plates full of crisp which they munched as they talked. It would be vain to attempt an account of the topics discoursed upon: they talked of household affairs, of turkey cocks and turkey hens and poultry in general, prices, and of the villainy of servants. They discussed the young men who were casting *sheep's eyes* on Delia or Petronella or Susie. Oh, their artfulness! If they had made up their minds there should be a match, a match there was sure to be.

The gentlemen smoked their pipes on the *stoep*, dropping into the *klein zaal* occasionally to wet their throats with nipperkins of "Geniver." They discussed the recent rebellion in Uva, the capture of the last king of Kandy, the arrival of a regiment of Sepoys encamped in Slave Island and the hideous things they did, smoking opium all day, and dancing round large fires at night. Mynheer is now parting with his visitors for the night. See them pledge each other's health in a final "soupkie" or nip: watch them bow in stately fashion, the visitor first and the host next. Hear them exclaiming as they lift their glasses: *Gezondheid Mynheer*, which means, *your health Sir*.

We very naturally find it difficult to venerate antiquity when the customs and practices of antiquity have outlived their age. But we can venerate its people when the people have been our own progenitors, and were actuated by a simplicity and honesty of purpose, which is in marked contrast to the methods of modern times. It is good occasionally to unlock the store-houses of memory, and to compare the past with the present. It shows us what obstacles we have overcome, what victories we have achieved, and what dangers we have yet to avoid. We now come to more recent times. In the latter half of the last century a mounting flood of industrial enterprise, of trade and commerce, began to force the merchants' *godowns*, the shops of petty traders, the coolies employed at the wharves, and that mysterious crowded life inseparable from Eastern ports, out of the business centre of the Fort, into the suburbs. Yielding to this growing need and vital urge, the gardens and Dutch houses in the Pettah had to make way for stores, boutiques, and dingy dens, where humanity massed together. Jostling crowds, pestiferous hawkers, slow moving bullock carts, trams and lorries, invaded and clogged the clean shaded streets.

The families who for centuries had made the Pettah a residential area, sought other homes. In this process of scattering, the strong bond which helped the Burghers in the past to coalesce, gradually weakened. Forces were at work endangering all that had made them a distinct and valuable asset in public life. Conflicting ambitions and ideals were weakening their resolve to keep what they had well-nigh lost, the proud inheritance of their past and the sense of their oneness in origin and in feeling.

During a decade and even more, one man sought fervently to give an organised form to a desire agitating the minds of the Dutch descendants in Ceylon for a bond of union recognising them as a distinct class.

Much had to be done before such a foundation could be laid. Misunderstandings had to be removed, ignorance, had to be enlightened, the practical man had to be convinced. The apathetic had to be aroused, the too enthusiastic had to be restrained. Slowly but surely, the community came to understand what was exactly intended. On the 12th of November, just 40 years ago, the work was begun.

[The paper read then detailed the steps taken at the instance of Mr. R. G. Anthonis to found the Dutch Burgher Union, and concluded as shewn below.]

Nothing is more clear than that the Dutch Burgher Union of Ceylon has more than justified its existence. It has served the Community well, and its usefulness and power will be all the greater as it more and more nearly represents, not a part of the community but the whole of it.

NEWS AND NOTES.

Summary of Proceedings of the General Committee—17th June, 1947. (1) Votes of Congratulation were passed in connection with the honours conferred on Mr. R. L. Brohier (O.B.E.) and Dr. F. G. Smith (C.B.E.). (2) Messrs. E. F. G. van Buren and H. H. Felsinger were elected members of the Union, and Mr. Victor de Vos was re-elected. (3) It was reported that the rent of the Union building had been increased from Rs. 200 to Rs. 225 per mensem.

15th July, 1947. (1) Votes of condolence were passed on the death of Messrs. E. G. LaBrooy and F. H. E. Thomas. (2) A vote of congratulation was passed on the appointment of the Hon. Mr. A. E. Keuneman as acting Chief Justice. (3) The following Committee was appointed to organise Founder's Day celebrations, the expenses not to exceed Rs. 500:—Messrs. H. E. S. de Kretser, I. G. L. Misso, R. L. Brohier and L. L. Hunter. (4) Mr. H. E. W. Bartholomeusz was elected a member of the Union.

19th August, 1947. The Carnival accounts were tabled shewing a credit balance of Rs. 9,008·31. The following allocations were made:—St. Nicolaas Home Fund, Rs. 6,700; Social Service Fund, Rs. 1,100, Education Fund Rs. 1,100 (2) Mr. C. P. Loos was elected a member of the Union. (3) The amount to the credit of St. Nicolaas Home Fund was reported to be Rs. 23,855·68. (4) The purchase of number of books for the Reference Library was approved. (5) It was decided to make a contribution of Rs. 250 to the Governor's Flood Relief Fund.

16th September:—(1) A vote of condolence was passed on the death of Mrs. Errol Loos. (2) Mr. E. C. Berenger was elected a member of the Union. (3) The amount to the credit of St. Nicolaas Home Fund was reported to be Rs. 30,554·87.

21st October, 1947:—(1) Votes of congratulation were passed on the nomination of Messrs. J. A. Martensz and E. F. N. Gratiaen to the House of Representatives. (2) Messrs. F. E. W. Felsinger, C. J. C. Lourensz, D. W. Smith and M. W. B. Thiedeman were elected members of the Union. (3) The resignation of membership of Mr. R. H. L. Brohier was accepted.

18th November, 1947:—(1) A vote of condolence was passed on the death of Mrs. H. Ludovici. (2) A vote of congratulation was passed on the appointment of Mr. V. L. St. C. Swan as Commissioner of Assize. (3) It was reported that Rs. 393·64 had been spent on Founder's Day celebrations. (4) Mrs. I. P. LaBrooy and Mrs. B. M. Thomasz were elected members of the Union and Mr. F. H. Loos was re-elected. (5) The amount to the credit of St. Nicolaas Home Fund was reported to be Rs. 31,430·91.

16th December, 1947:—(1) Miss E. V. Crozier, Messrs. J. W. S. Beven, C. M. F. Jennings, K. L. Joachim, E. J. de Kretser, D. M. A. Speldewinde and D. A. Kellar were elected members of the Union. (2) It was decided to organise a Discussion Circle towards the end of January 1948. (3) The resignations of membership of Mrs. N. T. de Kretser and Mrs. A. N. Weinman were accepted. (4) Mr. A. D. Raffel and Dr. O. S. Sela were re-admitted as members. (5) It was decided, owing to the paucity of subscribers, to issue the Journal half-yearly instead of quarterly in future, reduce the number of copies printed, and to endeavour to obtain more subscribers.

The Journal.

The D. B. U. Journal was at first issued free of charge to all members of the Union. After the lapse of 16 years, that is, in 1924, it was found that the cost of publication was too heavy a tax on the resources of the Union, the monthly subscription at that time being only 50 cents per member. It was decided therefore to make a separate charge of Rs. 5 per annum for four quarterly issues of the Journal. This arrangement has been in force for the last 23 years, and though the number of subscribers has been at no time even fairly representative of the Union, enough has been obtained to keep the Journal alive.

But a new factor has arisen which has upset all our calculations. The cost of printing has risen inordinately, and we are now being called upon to pay twice as much for printing the Journal as we did before. There would have been no difficulty in doing this if all those members who can subscribe Rs. 5 a month for the Journal did so. But, actually, we have only about 75 subscribers, and some of these do not pay their subscriptions regularly.

The question of continuing the Journal under the altered circumstances was considered by the Committee at its last meeting, and it was decided to have two half-yearly issues instead of four quarterly issues, until conditions improve, and to make an appeal for new subscribers. A list of the present subscribers is given below, and it is hope that all those whose names do not appear in it

will send in the small annual subscription of Rs. 5, and thus help to keep alive the Journal, which has now reached the fortieth year of its existence—an achievement which few local publications of a similar nature can claim. For the present, the Journal will appear in January and July of each year.

List of Subscribers to the D.B.U. Journal.

Messrs. D. V. Altendorff, G. H. Altendorff, Dr. H. T. Anthonisz, Dr. V. H. L. Anthonisz, Mrs. F. Anthonisz, the Government Archivist, Mr. B. R. Blaze, Dr. Frank Bartholomeusz, Rev. Father D. J. Berenger, Mr. L. E. Blaze, Mr. C. P. Brohier, Mr. R. L. Brohier, Dr. E. S. Brohier, Mr. W. W. Beling, Mr. C. L. Beling, Dr. C. L. Bartholomeusz, Mr. F. C. Berenger, Mr. R. J. E. Beling, Dr. H. S. Christoffelsz, Mr. A. E. Christoffelsz, Dr. E. L. Christoffelsz, Mr. T. W. Collette, Mr. H. K. de Kretser, Mr. A. E. Dirckze, Dr. H. A. Dirckze, Mr. O. L. De Kretser, Sr., Mr. O. L. De Kretser, Jr., Mr. N. E. Ernst, Mr. J. A. Fryer, Mr. A. L. B. Ferdinand, Mr. G. H. Gratiaen, Mr. H. E. Grenier, Mr. Bertie Grenier, Mr. Guy O. Grenior, Mr. Vernon Grenier, Mr. A. C. B. Jonklaas, Rev. P. L. Jansz, Mr. Gordon Jansz, Mr. J. F. Jansz, Mr. D. Janszé, Mr. A. E. Keuneman, Mr. Roslyn Koch, Mrs. B. C. Kelaart, Mr. C. O. Kellar, Mr. F. E. Loos, Mr. W. J. F. Labrooy, Mr. Fred Loos, Mr. V. C. Modder, Mr. J. A. Martensz, Dr. A. Nell, Mr. B. Ohlmus, Mr. C. J. Oorloff, Mr. L. G. Poulier, Mr. R. S. V. Poulier, Mr. R. D. P. Paulusz, Mr. C. L. H. Paulusz, Dr. R. L. Spittel, Dr. W. H. Schokman, Mr. C. A. Speldewinde, Dr. Donald Schokman, Dr. V. R. Schokman, Dr. H. E. Schokman, Mr. C. G. Schokman, Miss Agnes Spittel, Mr. F. P. H. Speldewinde, Mr. J. R. Toussaint, Dr. J. R. de V. Toussaint, Mr. T. K. Toussaint, Mr. E. A. vanderStraaten, Mr. H. vandenDriesen, Mr. W. J. A. vanLangenberg, Mr. J. W. vanLangenberg, Mr. G. A. Wille, Dr. L. O. Weinman, Mr. H. de Wildt, Mr. A. Weinman, Mrs. L. M. Weinman.

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