

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	869	Press ~~Mis.~~
Dated	13.3.	19-88

Not to be folded or roughly handled

16/16

IX

Proceedings of the Madras Government, Judicial Department,
13th March 1866.

No. 87. Read the following letter from the Secretary to the Government of India, to the Chief Secretary to Government, Fort Saint George; dated Fort William, 17th February 1866, No. 1620.

Home Department.

I am directed to transmit, for the information of His Excellency the Governor in Council, the accompanying copy of a Despatch, No. 7, dated the 7th instant, addressed by the Government of India to Her Majesty's Secretary of State, regarding the Establishments of the several High Courts in India.

HOME DEPARTMENT.

JUDICIAL.

No. 7 of 1866.

To

THE RIGHT HONORABLE SIR CHARLES WOOD, BART. G. C. B.,
SECRETARY OF STATE FOR INDIA.
Fort William, the 7th February 1866.

SIR,

With reference to your letter in the Judicial Department, No. 17, dated 24th March 1865, requesting that our review of the Establishment of Officers of the High Court at Bombay might be reported, we have the honor to state that, the returns of work of the High Courts of the three Presidencies having been obtained after the departure to England of our Honorable Colleague Mr. Maine, we deferred a reply to your letter till his return.

2. We have now, in our review, the further advantage of the Proceedings which were reported to you by the Government of Madras in their letter, No. 17, dated 5th December 1865.

3. We transmit, herewith, the correspondence with the Government of Bombay noted below, and forward, also, a list of the Establishments of the High Courts in the three Presidencies, on the side of Original Jurisdiction and in the Appellate Branch, and a return of the Civil work done on each side of the Court in the years 1863 and 1864.

4. The Proceedings of the Governments of Bombay and Madras, in revising the salaries and Establishments of the High Courts, have, as they occurred, been duly reported to you by those Governments. We did not attempt to revise those proceedings where they appeared susceptible of amendment, because the terms of Section 6 of the Letters Patent for constituting the High Courts of Madras and Bombay admit of no other construction than that the Governors in Council of those Presidencies, acting irrespectively of the Government of India, are constituted the final judges of the High Court establishments for their Presidencies.

5. The following is an abstract of the returns of Civil work in the High Courts of the three Presidencies in 1863 and 1864:—

Amount of work received in the High Courts.

	Calcutta.		Madras.		Bombay.	
	1863.	1864.	1863.	1864.	1863.	1864.
Original suits instituted under Act VIII of 1859... ..	1135	1385	335	369	591	851
Regular appeals instituted... ..	595	569	76	83	20	9
Applications for special appeals preferred... ..	3659	3830	526	487	870	994
Total of Appellate work	4254	4399	602	570	890	1003
Total of Original suits and Appellate work	5389	5781	937	939	1481	1854

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Work done in the High Courts.

	Calcutta.		Madras.		Bombay.	
	Barrister Judges	5	Barrister Judges	2	Barrister Judges	4
	Civilian Judges	*10	Civilian Judges	3	Civilian Judges	4
		15		5		8
	* One reduced since.					
	1863.	1864.	1863.	1864.	1863.	1864.
Original suits disposed of ...	869	1325	311	346	442	851
Regular Appeals disposed of...	1250	716	89	98	15	18
Applications for Special Appeals disposed of...	4823	4653	826	583	934	1135
	6073	5369	915	681	949	1153
Total of Original Suits and Appeal cases ...	6942	6694	1226	1027	1391	2004

6. We are satisfied from these figures that one Judge may be safely reduced in Madras, and two Judges in Bombay, leaving four in the former, and six in the latter Court; for, if the amount of work done in 1863 and 1864 had been done by this reduced complement, the proportion of work per Court or Bench would still have been less than the proportion attained in Calcutta.

7. In deducing the proportion of work from the total amount of work, the number of suits may be divided on the Original side by the number of Courts (*i. e.*, one Judge to each Court), and on the Appellate side by the number of Benches of two Judges each, debiting any residual Judges to miscellaneous work.

8. Where more than one Judge per Court is employed on the side of Original Jurisdiction, the proportion may be compared per Judge as well as per Court, in order to appreciate fully the expensiveness of such a distribution of work.

9. The allotment of two Judges to one Court on the side of Original Jurisdiction is peculiar to the High Court of Madras. Such a tribunal as a Bench of Judges is scarcely known on the Original side of the Bengal High Court. Two Original Courts are constantly sitting, each presided over by a single Judge. Occasionally, a third Judge comes to hold Sessions, to sit with the two Judges on extremely difficult points, or to sit with one of them on appeals from the other.

10. We have ascertained that, on the whole, we may assume the Original Jurisdiction at Calcutta to require the time of two Judges and a half.

11. This half Judge is chiefly for Criminal cases; but to make the comparison as favorable as possible to the other Courts, we will debit him to the Civil business of the Court.

12. The remaining Judges must be debited to the Appellate side of the Court. The complement of Judges in the Calcutta Court has been lately reduced by one, or to fourteen Judges, but assuming it at what it was during the years to which the statistics refer, viz., fifteen, there remain, after deducting two and a half for the Original side, twelve and a half for the Appellate Branch. The odd half Judge is represented by the sittings out of Court, which, on the part of the Chief Justice, are frequent, on account of the great amount of administrative business, and by occasional sittings of a single Judge for miscellaneous work.

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13. There remain twelve Judges to be accounted for, making six benches. Theoretically, six have always been sitting, but, owing to the greater liability to illness caused by severe work in the more trying climate of Calcutta, one bench is often unable to sit. The actual proportion of work per bench would, therefore, be the quotient obtained by dividing the total number of suits on the Appellate side by five benches and a fraction, not the smaller quotient obtained by dividing by six benches. In order, however, to make the comparison as favorable as possible to the Madras and Bombay Courts, the proportion of work per bench in the Calcutta Court will be reckoned on the footing of six benches.

14. In the Bombay High Court there were seven Judges until 29th August 1863, when an eighth Judge joined the side of Original Jurisdiction, and we have taken the number of Judges for that year at $3\frac{1}{2}$ for three Courts. In 1863 there was one bench in the Appellate Branch, but in 1864 a second bench was formed, and we have debited the fourth Barrister Judge and the four Civilian Judges for that year to the Appellate side.

15. The proportion of work on the numbers actually employed in 1863 and 1864, and what it would have been for those years on the complement proposed by us, may now be exhibited:—

	Actual proportion of Work.						The proportion which would have been obtained with 6 Judges for Bombay and 4 for Madras.									
	1863.				1864.				1863.				1864.			
	No. of Courts or Benches.	No. of Judges.	Proportion of Work.		No. of Courts or Benches.	No. of Judges.	Proportion of Work.		No. of Courts or Benches.	No. of Judges.	Proportion of Work.		No. of Courts or Benches.	No. of Judges.	Proportion of Work.	
			Per Court or Bench.	Per Judge.			Per Court or Bench.	Per Judge.			Per Court or Bench.	Per Judge.			Per Court or Bench.	Per Judge.
<i>Original Jurisdiction.</i>																
Calcutta	2	21	434	347	2	21	662	530	2	21	434	347	2	21	662	530
Bombay	3	31	149	134	3	3	284	284	2	2	224	224	2	2	426	426
Madras	1	2	311	156	1	2	346	173	1	1	311	311	1	1	346	346
<i>Appellate Branch.</i>																
Calcutta	6	12	1012	} See Miscellaneous.	6	12	895	.....	6	12	1012	.....	6	12	895	.....
Bombay	1	2	949		2	4	576	.....	2	4	475	.....	2	4	577	.....
Madras... ..	1	2	915		1	2	681	.....	1	2	915	.....	1	2	681	.....
<i>Miscellaneous.</i>																
Calcutta		01	.....			01	.....			01	.....			01	.....	
Bombay		2	.....			1	.....			1	.....			1	.....	
Madras... ..		1	.....			1	.....			1	.....			1	.....	
<i>Total.</i>																
Calcutta		15	.....			15	.....			15	.....			15	.....	
Bombay		71	.....			8	.....			6	.....			6	.....	
Madras		5	.....			5	.....			4	.....			4	.....	

16. The main point to be established is that the reduced complement would not be required to give a larger outturn of work than is given in the Calcutta Court, and the figures show this conclusively.

17. We would, accordingly, recommend that the vacancy in the Madras High Court, for which the Chief Justice desires a Barrister Judge, and the Madras Government, a Civilian Judge, be not filled up, and that two Judges be reduced in Bombay.

18. And as the reduced complement would still have less work than the Judges of the Calcutta Court, who are not aided by a salaried Officer as Commissioner on the side of Original Jurisdiction for the taking of accounts and making investigations out of Court, we recommend the abolition of this appointment in the Madras and Bombay Courts, at a saving of Rupees 1100 monthly in the former, and of Rupees 2700 monthly in the latter Court.

19. The incumbents of this appointment in Madras and Bombay are also Taxing Officers, but it will be shown presently that the duties of Taxing Officer can be provided for separately without additional expense.

20. The Chief Justice, Bombay, urged in his letter, dated 26th October 1863, that the Commissioner for taking accounts and making investigations performs, without further remuneration, "the duties of Master and Equity Registrar," in connection with all the undisposed of equity business in the late Supreme Court.

21. This reason was of temporary force only, and it is now inoperative; Sir M. Sausse having, in the 16th paragraph of his subsequent letter, dated 14th May 1864, stated his expectation that all existing equity suits would have been nearly disposed of by 1865 (the beginning of 1865 apparently), and that Act XVIII of 1863, for speedily putting an end to the appointment of Master in Equity, and transferring its duties to one of the Judges of the High Court, could then be introduced into Bombay.

22. We now proceed to review the remaining Establishments of the High Court, beginning with the side of Original Jurisdiction.

23. The Officers connected with that side of the Court may be classed as those who are maintained for the protection of Government interests, or for the administration of details affecting the public generally, and not relating to matters before the Court, and 2ndly, those who are required for maintaining the regularity and efficiency of procedure in the Court.

24. The expenditure for the first Class of Officers in the three High Courts is as follows:—

	Calcutta.		Madras.		Bombay.	
		RS.		RS.		RS.
Advocate General.....	1	3135	1	2188	1	1600
Standing Counsel.....	1	1333	...	...	...	...
Solicitor to Government.....	1	2000	1	1175	1	1500
Attorney for Paupers.....	...	...	...	...	1	500
Administrator General.....	Paid by a Commission of 3 per cent. on the Estates administered.		Paid by a Commission.		1	650, besides commission at 5 per cent.
Establishment for the Advocate General.....	3	6468	2	3363	4	4250
		314		115		200
		6782		3478		4450

25. Considering the amount of important professional business devolving on the Law Officers in Calcutta from work connected with the Governments of India and Bengal, and with matters which are referred by other Local Governments and Administrations in the Bengal Pres-

idency, we are so far from thinking that any reduction of the charge for them, either in salaries or strength, is expedient, that we have it in contemplation to incur an increase of charge for the better conduct of Criminal Prosecutions. We shall probably address you on this subject at an early date.

26. The Bombay Government have also lately represented the necessity of giving an increase of salary to the Government Solicitor.

27. The charge for the Attorney for Paupers, Bombay, is supported by the Chief Justice of the High Court of that Presidency by the remark quoted on the margin. A similar appointment existed formerly, but is not now found necessary, in Calcutta, nor is it allowed in Madras; and under the Code of Civil Procedure, which is now in force in the Original Jurisdiction of the High Court, paupers have to appear in person, while, under the Draft Code of Civil Procedure, they will be exempted, when so appearing, from the Stamp duty, which, according to that Draft Code, will supersede the fees now taken in the High Court on the side of Original Jurisdiction. We consider that the appointment may be abolished.

28. The Government of Bombay will be asked whether, having regard to the great advance of Bombay in wealth since the commission of the Administrator General was fixed at five per cent. on the amount of assets collected and distributed by him, the additional sum of Rupees 650 a month which is allowed to him as salary need any longer be continued, no similar payment being made even in Madras.

29. The second class of appointments or offices mentioned in our 21st paragraph is in two Divisions, viz., 1st, those connected with the procedure of the Court, and 2ndly, Officers and Attendants allowed to the Judges personally, and miscellaneous Court House Servants and Establishments.

30. In the first Division are the following, exclusive of Interpreters and Translators, who will be considered separately:—

	Calcutta.		Madras.		Bombay.	
		RS.		RS.		RS.
A. Prothonotary	1	2,000	1	1,000	1	2,500
Clerk of the Crown, Registrar ... }	1	1,500	1	1,500	1	750
	2	3,500	2	2,500	2	3,250
B. Deputies of the preceding ...	1	1,000	2	475	2	675
C. Commissioner for taking accounts, and Taxing Officer... ..	...	...	1	1,100	1	2,700
	3	4,500	5	4,075	5	6,625
D. Receiver... ..	1	400	...	...	...	...
Sheriff... ..	1	97	1	920	1	350
Deputy... ..	...	Paid by fees	...	...	1	300
Coroner	1	300	1	380	1	425
	...	5,297	...	5,375	...	7,700
Office Establishments.						
For A... ..	...	3,472	...	949½	...	1,579
For C... ..	...	528	...	0	...	269
For D... ..	...	1,017	...	669	...	497
	...	5,017	...	1,618½	...	2,345
	...	10,314	...	6,993½	...	10,045

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31. The first Officer on Rupees 2000 in Calcutta performs the duties of Registrar on the Criminal side, of Accountant General, and of Taxing Officer; the second in the same Court, on Rupees 1500, performs the office duties which formerly appertained to the Master in Equity; the third, on Rupees 1000 monthly, assists the other two, chiefly the second.

32. The second Officer having gone on long leave on Medical Certificate in 1865, his duties were distributed by the Chief Justice among the Clerks on the Office Establishment and the third Officer, on Rupees 1000 monthly, thus shewing that more than two Officers of standing, of the class usually paid Rupees 1000 a month or more, are not required for regulating the details of procedure in the High Court on the side of Original Jurisdiction.

33. The inutility of more than two principal Officers for the above mentioned duties will be still more clearly established when, as provided for in the Draft Code of Civil Procedure, Stamp duties shall be substituted for fees in the High Court. The assessing of the fees, and the collection of them and accounting for them, now devolve on the two Officers on Rupees 1500 and Rupees 1000, but, on the introduction of Stamps, the sufficiency or insufficiency of the Stamp will be determined by the Judge, and cash accounts of collections will not be necessary.

34. The duties of the first and second Officers will thus admit of redistribution, whereby the third Officers will become unnecessary, and the second Officer may hereafter be limited probably to less than Rupees 1500 a month. The details of this arrangement will have to be settled in communication with the Chief Justice of the High Court, but we may safely assume here that two Officers will be sufficient for the work embraced in the heads A. to C. of our 30th paragraph, and that a considerable reduction in the Office Establishments allowed in Calcutta for those divisions will also be feasible.

35. Two Officers will be ample for the same duties in Bombay and Madras, the second Officer at Madras being restricted to a salary of about Rupees 600 or 700 a month. The present charge for this work is Rupees 4075 in Madras, and Rupees 6625 in Bombay, so that there will be a reduction of expense, in addition to the saving of the salary of the Commissioner for taking accounts, which we have discussed in a former part of this review.

36. The expenditure included in D. of our 30th paragraph, and the fees of the appointments therein detailed, involve difficult questions which will be dealt with separately. All the expenses shewn in class D. of our 30th paragraph will be embraced in the inquiry.

37. The charges for Officers and Attendants for the Judges, and for miscellaneous Court House Establishments are as follow:—

	Calcutta.		Madras.		Bombay.	
		Rs.		Rs.		Rs.
Judges' Clerks	1	500	1	550	3	630
Commissioners for taking Affidavits, (appointments held by Judges' Clerks)	...	...	...	...	2	750
Establishment for ditto.	...	745	...	...	...	...
Peons for Judges.	...	90	...	Not shewn separately.	...	96
Chobdars.	...	...	...	...	16	256
		1,335		550		1,732

38. In Calcutta, the Chief Justice is allowed one Clerk, but none of the Puisne Judges, not even those sitting on the side of Original Jurisdiction. We think that the charge for Judges' Clerks, and for Commissioners for taking Affidavits, should be limited to one Officer altogether, and that the Clerk at Madras should receive less pay than the Rupees 550 allowed to the present incumbent.

39. Regarding Chobdars, we adhere to the opinion expressed in our letter to the Government of Bombay, No. 3823, dated 15th June 1863, that this expense should cease on both sides of the Court, both of Original Jurisdiction and the Appellate Branch.

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40. Regarding Establishments on the Appellate side of the Court, we would observe that the Registrar of the Calcutta Court receives Rupees 1700, whereas the Registrar of the Bombay Court receives Rupees 2000 a month. The present Registrar of the Madras High Court will also draw during the period of his incumbency a monthly salary of Rupees 2000, to be afterwards reduced to Rupees 1600, in accordance with the sanction conveyed in your Despatch, No. 1, dated 16th January 1864, addressed to the Government of Fort Saint George.

41. We have recently declined to increase the salary of the Registrar of the Calcutta Court, and we see no reason for continuing the higher salary in Bombay. In all three Courts, the character of the Registrar's work is pretty much the same; but in the Calcutta High Court the amount of work performed by the Registrar on the Appellate side is more than double that performed by the Registrars of the other two High Courts put together.

42. The cost of Interpreters and Translators in the High Courts of the three Presidencies is as follows:—

	Calcutta.	Madras.	Bombay.
	Rs.	Rs.	Rs.
Original Jurisdiction ...	2,671	1,094	2,804
Appellate Branch... ..	5,595	2,450	...
	8,266	3,544	2,804

43. The charge for Calcutta includes Rs. 1000 a month for extra translations, which is probably not a permanent expense. Inquiries on this point have been made in connection with the Budget Estimate of the High Court for 1866-67, which is now under consideration.

We have the honor to be,
Sir,

Your most obedient humble Servants,
(Signed) JOHN LAWRENCE.
(„) W. R. MANSFIELD.
(„) H. S. MAINE.
(„) W. GREY.
(„) G. N. TAYLOR.
(„) W. N. MASSEY.
(„) H. M. DURAND.

List of enclosures.

From Bombay, No. 278, dated 9th February 1863, and enclosures.
From Bombay, No. 277, dated 9th February 1863, and enclosure.
From Bombay, No. 441, dated 10th March 1863.
To Bombay, No. 2767, dated 29th April 1863.
From Bombay, No. 852, dated 18th April 1863.
From Bombay, No. 962, dated 23rd April 1863, and enclosure.
To Bombay, No. 3823, dated 15th June 1863.
From Bombay, No. 2207, dated 25th July 1864, and enclosures.
From Bombay, No. 2669, dated 26th August 1864, and enclosures.
To Bombay, No. 5100, dated 1st November 1864.

A Comparative Statement of the cost of the Establishments of the High Courts in Calcutta, Madras, and Bombay.

Statement of Original Suits, Regular Appeals, and Applications for a special appeal instituted and disposed of in the High Courts at Calcutta, Madras, and Bombay, in the years 1863 and 1864.

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A Comparative Statement of the cost of the Establishments of the High Courts in Calcutta, Madras, and Bombay.

	Calcutta.		Madras.		Bombay.	
	No.	Rupees.	No.	Rupees.	No.	Rupees.
Chief Justice.....	1	6,000	1	5,000	1	5,000
Puisne Judges.....	13	54,349	4	16,083	7	26,666
	14	60,349	5	21,083	8	31,666
ORIGINAL JURISDICTION.						
Salaries.						
Advocate General...	1	3,135	1	2,188	1	1,600
Standing Counsel...	1	1,333	...	...	...	...
Solicitor to Government	1	2,000	...	*1,175	1	1,200
Attorney for Paupers...	...	...	...	...	1	500
Administrator General.	...	...	...	...	1 (a)	658
	3	6,468	...	3,363	...	3,950
Receiver.....	1	400	...	...	...	...
Prothonotary.....	(b) 1	2,000	...	...	(c) 1	2,500
Deputy.....	...	...	...	...	1	500
Clerk of the Crown and	...	...	...	...	...	...
Crown Prosecutor ...	...	...	1	1,000	1	750
Ditto ditto Deputy.....	...	...	1	175	1	175
Registrar.....	(d) 1	1,500	1	1,500	...	...
Assistant.....	...	...	1	300	...	...
Commissioner for taking	...	...	...	...	...	...
accounts and Taxing	...	...	...	...	...	...
Officer.....	(e) 1	1,000	1	1,100	1	2,700
Ditto for taking Affi-	...	...	...	...	...	...
davits.....	...	...	...	...	2	750
Judges' Clerk.....	1	500	1	550	3	630
Sheriff.....	1	97	1	920	1	350
„ Deputy.....	...	...	...	...	1	300
Coroner.....	1	309	1	380	1	425
Interpreters and Trans-	...	...	...	...	...	...
lators.....	5	2,200	3	886	7	2,230
Ditto of Foreign Lan-	...	...	1	158	1	100
guages.....	...	...	...	...	...	...
	...	14,465	...	10,332	...	15,360
Establishments for the preceding.						
Office Establishment of	...	...	...	...	...	...
the Registrar.....	...	2,196	...	416½	(f) 1,178	...
Clerk of the Crown ...	(g) 750	...	(g) 533	...	156	...
Insolvent Court Estab-	...	526	...	...	...	245
lishment.....	...	...	...	...	...	...
Commissioner for tak-	...	...	...	...	...	...
ing Accounts and	...	...	...	...	...	...
Taxing Officer... ..	(h) 528	...	...	...	269	...
Advocate General... ..	314	...	115	...	200	...
Official Assignee... ..	...	...	...	...	244	...

* This appointment appears to have been vacant on 1st May 1864.
(a).—Besides commission at 5 per cent., whereas that of the Administrator General, Calcutta, is 3 per cent.

(b).—Is also Clerk of the Crown, Accountant General, Sealer, and Taxing Officer.

(c).—Is also Ecclesiastical and Admiralty Registrar.

(d).—Is also Keeper of Records and Muni-ments, and performs the office duties of the former Master in Equity.

(e).—Is styled Chief Clerk and Commissioner for taking accounts.

(f).—For the Prothonotary and Keeper of the Records and Ecclesiastical and Admiralty Registrar.

(g).—Also for the Prothonotary.

(h).—For Taxing Officer.

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A Comparative Statement of the cost of the Establishments of the High Court, &c.—(Continued.)

	Calcutta.		Madras.		Bombay.	
	No.	Rupees.	No.	Rupees.	No.	Rupees.
Estts, &c.—(Continued).						
Receiver.....	...	306	...	...	...	...
Sheriff.....	...	603	...	458	...	132
Coroner.....	...	108	...	211	...	121
Clerk to the Chief Jus-	...	45	...	...	...	...
tice.....	...	...	...	...	...	...
Interpreters and Trans-	...	471	...	50	(i) 474	(i).—Includes two Assis-
lators.....	...	...	...	...	...	tant Translators on Rs.
Court House Establish-	...	192½	...	236½	(j) 407½	180.
ment, including Crier	...	...	...	...	...	(j).—Includes Rupees 100
and Miscellaneous ...	...	...	...	...	...	for Swearing Priests,
Office Servants not in-	...	...	...	486	...	who are to be discon-
cluded in the above.	...	90	...	Not shown	...	tinued, and Rupees 200
Peons for Judges...	...	...	...	separately.	...	for a Constable, a Court
Chobdars.....	...	...	...	...	(k) 424	House-keeper, and two
	...	6,129½	...	2,506	...	Criers.
	...	...	...	...	...	(k).—viz, 2 Tipstiffs
	...	...	...	...	...	Rs. 200
	...	...	...	...	...	14 Chobdars 224
APPELLATE BRANCH.						
Salaries.						
Registrar.....	1	1,700	...	2,000	...	2,000
„ Deputy... ..	1	1,000	...	700	...	600
„ Assistants ...	4	1,600	...	...	...	400
Law Officers... ..	2	600	...	280	...	(l)
Reporters... ..	(m) 3	1,800	...	400	...	(l).—A Remembrancer for
	...	6,700	...	3,380	...	Legal Affairs on Rupees
	...	...	...	...	...	500 is omitted, the
	...	...	...	...	...	nominaly correspond-
	...	...	...	...	...	ing Office in Calcutta
	...	...	...	...	...	having also been omit-
	...	...	...	...	...	ted.
Establishments for the	...	...	...	...	...	(m).—Three on Rupees
preceding.	...	...	...	...	...	2,000 were temporarily
English Office.....	...	(n) 6,161	...	1,734	...	sanctioned, but the
Native Office.....	...	...	...	361	...	actual charge is Rupees
Interpreters... ..	...	800	...	1,000	...	1,800 for two Reporters
	...	...	...	...	...	and a Short-hand Wri-
	...	...	...	...	...	ter.
Translators.....	...	(o) 4,795	...	1,450	...	(n).—Not separable as
Chobdars.....	...	...	...	...	...	English and Native
Office Servants and Mis-	...	335	...	337	...	Offices. A separate de-
cellaneous... ..	...	...	...	...	...	tail is appended.
	...	12,091	...	4,882	...	(o).—Includes Rupees
	...	...	...	...	...	1,000 for extra Trans-
	...	...	...	...	...	lators for one year.

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ABSTRACT.

	Calcutta.		Madras.		Bombay.	
	No.	Rupees.	No.	Rupees.	No.	Rupees.
Judges.....	...	60,349	...	21,083	...	31,666
<i>Original Jurisdiction.</i>						
Salaries.....	...	14,465	...	10,332	...	15,360
Establishment.....	...	6,129½	...	2,506	...	3,934½
Total...	...	20,594½	...	12,838	...	19,294½
<i>Appellate Branch.</i>						
Salaries.....	...	6,700	...	3,380	...	3,000
Establishment.....	...	12,091	...	4,882	...	3,524
	...	18,791	...	8,262	...	6,524
Total of Salaries, including Judges.....	...	81,514	...	34,795	...	50,026
Establishment.....	...	18,222½	...	7,388	...	7,458½
Grand Total...	...	99,734½	...	42,183	...	57,484½

Statement of Original Suits, Regular Appeals, and Applications for a Special Appeal, instituted and disposed of in the High Courts at Calcutta, Madras, and Bombay, in the years 1863 and 1864.

	Original suits instituted under Act VIII. of 1863.		Original suits disposed of.		Regular Appeals instituted.		Regular Appeals disposed of.		Applications for Special Appeals preferred.		Applications for Special Appeals disposed of.		Remarks.
	1863.	1864.	1863.	1864.	1863.	1864.	1863.	1864.	1863.	1864.	1863.	1864.	
Calcutta. { Barrister Judges. 5 } { Civilian " ... 10 } { 15 }	1,135	1,385	869	1,325	595	569	1,250	716	3,659	3,880	4,823	4,653	
Madras. { Barrister Judges. 2 } { Civilian " ... 3 } { 5 }	335	369	311	346	76	83	89	98	526	487	826	583	
Bombay. { Barrister Judges. 4 } { Civilian " ... 4 } { 8 }	591	851	442	851	20	9	15	18	870	994	934	1,135	

*Proceedings of the Madras Government, Judicial Department,
13th March 1866.*

No. 88.

ORDER THEREON, 13th March 1866, No. 369.

To be recorded.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

Exd. J. H. Burns.

SECOND REPORT

OF

HER MAJESTY'S COMMISSIONERS

APPOINTED TO CONSIDER THE REFORM

OF THE

JUDICIAL ESTABLISHMENTS, JUDICIAL PROCEDURE, AND LAWS

OF

INDIA,

&c.

Presented to both Houses of Parliament by Command of Her Majesty.



LONDON:
PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR HER MAJESTY'S STATIONERY OFFICE.

1856.

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COMMISSION.

L.S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John M'Pherson Macleod, Esquire, John Abraham Francis Hawkins, Esquire, Thomas Flower Ellis, Esquire, and Robert Lowe, Esquire, Barrister-at-Law, Greeting:

Whereas by an Act passed in the Sixteenth and Seventeenth Years of Our Reign, reciting "That whereas by an Act of the Third and Fourth Years of King William the Fourth it was provided that Commissioners to be appointed thereunder, and to be styled the Indian Law Commissioners, should inquire into the Jurisdiction, Powers, and Rules of the existing Courts of Justice and Police Establishments in the Territories in the Possession and under the Government of the East India Company, and all existing Forms of Judicial Procedure, and into the Nature and Operation of all Laws, whether civil or criminal, written or customary, prevailing and in force in any Part of the said Territories, and should from Time to Time make Reports, in which they should fully set forth the Result of their Inquiries, and should from Time to Time suggest such Alterations as might, in their Opinion, be beneficially made in the said Courts of Justice and Police Establishments, Forms of Judicial Procedure and Laws, due Regard being had to the Distinction of Castes, Difference of Religion, and the Manners and Opinions prevailing among different Races and in different Parts of the said Territories;" and reciting, "That whereas the Indian Law Commissioners from Time to Time appointed under the said Act have, in a Series of Reports, recommended extensive Alterations in the Judicial Establishments, Judicial Procedure, and Laws established and in force in India, and have set forth in detail the Provisions which they have proposed to be established by Law for giving effect to certain of their Recommendations, and such Reports have been transmitted from Time to Time to the said Court of Directors; but on the greater Part of such Reports and Recommendations no final Decision has been had;" it is among other things enacted, that it shall be lawful for Her Majesty at any Time after the passing of the Act, by Commission under the Royal Sign Manual, to appoint such and so many Persons in England as to Her Majesty may seem fit to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them.

Now know ye, therefore, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John M'Pherson Macleod, John Abraham Francis Hawkins, Thomas Flower Ellis, and Robert Lowe, or any Three or more of you, to make a diligent and full Inquiry into and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. *And* We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons, as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company. *And* Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved Frederick Millett, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Twenty-ninth Day of November 1853, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,
(Signed) PALMERSTON.

COMMISSION.

L. S.

VICTORIA R.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir John Jervis, Knight, Chief Justice of Our Court of Common Pleas, and Sir Edward Ryan, Knight, and Our trusty and well-beloved Charles Hay Cameron, Esquire, Barrister-at-Law, John Macpherson Macleod, Esquire, Thomas Flower Ellis, Esquire, Robert Lowe, Esquire, Barrister-at-Law, and Frederic Millett, Esquire, Greeting:

Whereas We did, by Warrant under Our Royal Sign Manual bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, appoint you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, and Robert Lowe, together with Our trusty and well-beloved John Abraham Francis Hawkins, to be Our Commissioners to examine and consider the Recommendations of the Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as might by or with the Sanction of the Commissioners for the Affairs of India be referred to you for Consideration.

Now know ye, that We have revoked and determined, and do by these Presents revoke and determine the said Warrant bearing Date the Twenty-ninth Day of November One thousand eight hundred and fifty-three, and every Matter and Thing therein contained. *And* We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir John Jervis, Sir Edward Ryan, Charles Hay Cameron, John Macpherson Macleod, Thomas Flower Ellis, Robert Lowe, and Frederic Millett, or any Three or more of you, to make a diligent and full Inquiry into, and to examine and consider the Recommendations of the said Indian Law Commissioners, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure, and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure, and Laws as may, by or with the Sanction of the Commissioners for the Affairs of India, be referred to you for your Consideration. *And* We do by these Presents give and grant unto you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown or of the East India Company, and all such other Persons as you shall judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown or the said East India Company to bring and produce before you, or any Three or more of you, all Records, Orders, Books, Papers, and other Writings in the Possession of the Board of Commissioners for the Affairs of India or the East India Company.

And Our further Will and Pleasure is, that you do, within Three Years after the Twentieth Day of August One thousand eight hundred and fifty-three, or as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved John Abraham Francis Hawkins, Esquire, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Saint James's, the Seventeenth Day of March 1854, in the Seventeenth Year of Our Reign.

By Her Majesty's Command,

(Signed) PALMERSTON.

SECOND REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

We, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the judicial establishments, judicial procedure, and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure, and laws as might, by or with the sanction of the Commissioners for the Affairs of India, be referred to us; having applied ourselves to the duty thus assigned to us as regards judicial establishments and judicial procedure, in conjunction with the preparation, in pursuance of instructions from the Commissioners for the Affairs of India, of preliminary measures for the amalgamation of the Supreme and Sudder Courts at Calcutta, and having set forth the results in our First Report, have proceeded to examine and consider the state of the laws of India: And though it has not been possible for us to prepare a draft of such particular enactments as we would propose for the reform of those Laws, as we did in respect of the Judicial Establishments and Judicial Procedure, yet having arrived at conclusions as to what is most wanted, and seeing that the work of framing law to supply the want could not be performed before the expiration of the time within which it is required by Statute that every Report of ours shall be made, we think it our duty now to report our views on this highly important subject.

The proposed Penal Code, which was prepared by the Indian Law Commissioners in India when Mr. Macaulay was President of that body, being now under the consideration and revisal of the Legislative Council of India, with a view to its being enacted; we have not collectively made it a particular subject of our examination and consideration farther than was necessary in order that we might be able to frame in such a manner as to suit it the Code of Criminal Procedure which we submitted in our First Report. But we think it right to state, that we regard those two Codes as the means of remedying the evils of the existing state of things in India with respect to Criminal Law.

It remains for us to treat of the wants of India in respect of substantive Civil Law. The Law Commissioners in India made a very elaborate Report, dated 31st October 1840, to the Governor General in Council bearing on this subject, and containing a full disquisition on the question, whether the law of England ought not, on general principles, to have been held to be the *Lex Loci* of the British possessions in India from the time of their acquisition, as well as a statement of the views of the Commissioners as to the legislation which was required in regard to this matter under the circumstances of the period at which they wrote. From that Report and the various papers connected with it, all of which we have carefully examined and considered, we have obtained much information. We think it unnecessary, however, now to revive the retrospective question discussed by the Commissioners in India. We regard as far more important a conclusion respecting the present state of the laws of India at which they arrived on unquestionable grounds. It is this, that beyond the limits of the capital towns of the three Presidencies, there is not in actual operation any *Lex Loci*, any substantive Civil Law for the various classes of persons who have not, like the main portions of the population, namely, the Hindoos and Mahomedans, special laws of their own which our judicatures are required to enforce. This is a great want, which ought to be supplied. It is, however, a want which, in our opinion, is merged in another want, larger and not less urgent, and can best be supplied by a measure adapted to meet the whole of the actual emergency.

The Supreme Courts established by Royal Charters administer, within the limits of the capital towns, to Europeans and others not Hindoos or Mahomedans, the substantive Civil Law of England subject to certain exceptions and qualifications, which we need not particularize. That law therefore may correctly be regarded as within those limits an actual *Lex Loci*. From this arises a great difference between the state of the Capitals and that of the Provinces in respect of law. There is a further difference, which affects even the transactions of Hindoos and Mahomedans among themselves, arising from the different terms in which the kinds of cases to be decided by the special laws of the Mahomedans and Hindoos are described by legislative authority, for the guidance of those Supreme Courts and for that of the Courts of Justice in the provinces. The whole difference, consequently, between the state of the law at the Capitals and the state of the law in the Provinces is very great. This is manifestly an evil of no small importance. It cannot but produce much inconvenience even now; and if it were allowed to continue after the proposed union of the Supreme Courts and the Sudder Courts shall have been effected, the inconvenience, we think, would greatly increase. The anomalous state of the law, when one High Court presided over the whole administration of justice, both at the Capital and in the Provinces, would be more striking and more insufferable.

In the present state of the population of India, it is necessary to allow certain great classes of persons to have special laws, recognized and enforced by our Courts of Justice, with respect to certain kinds of transactions among themselves. But we think that it is neither necessary nor expedient that, for any persons, the law should vary according as they reside within or beyond the boundary of the Capital.

We have given our attentive and anxious consideration to the means of remedying the great defects in the state of the laws in India to which we have now adverted; and we have arrived at the conclusion that what India wants is a body of substantive Civil Law, in preparing which the law of England should be used as a basis; but which, once enacted, should itself be the Law of India on the subjects it embraced. The framing of such a body of law, though a very arduous undertaking, would be less laborious than to make a digest of the law of England on those subjects, as it would not be necessary to go through the mass of reported decisions in which much of English law is contained. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and the character, religions, and usages of the population, would, we are convinced, be of great benefit to that country.

Being designed to be the law of India on the subjects it embraces, this body of law should govern all classes of persons in India, except in cases excluded from the operation of its rules by express provisions of law. Not only must there, however, be large exceptions in respect of amenability to this body of law, but there are important subjects of Civil Law which we think it would not be advisable that it should embrace. It would be premature to attempt now to define either the exceptions or exclusions.

We see no reason, however, why, on very many important subjects of Civil Law—we shall only name one, contracts, as an example—such law cannot be prepared and enacted as will be no less applicable to the transactions of Hindoos and Mahomedans, by far the most numerous portions of the population, than to the rest of the inhabitants of India.

If on any subject embraced in the new body of law it should be deemed necessary that for a particular class of persons or for a particular district or place there should be law different from the general law, and if there shall be no particular and cogent objection to the insertion of such special law into the proposed body of law, such special law, we think, ought to be provided in that way. But it is our opinion that no portion either of the Mahomedan law or of the Hindoo law ought to be enacted as such in any form by a British Legislature. Such legislation, we think, might tend to obstruct rather than to promote the gradual progress of improvement in the

state of the population. It is open to another objection too, which seems to us decisive. The Hindoo Law and the Mahomedan Law derive their authority respectively from the Hindoo and the Mahomedan religion. It follows that, as a British Legislature cannot make Mahomedan or Hindoo religion, so neither can it make Mahomedan or Hindoo law. A Code of Mahomedan law, or a digest of any part of that law, if it were enacted as such by the Legislative Council of India, would not be entitled to be regarded by Mahomedans as very law itself, but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing.

We have the satisfaction of being able to state that our opinions as to the defects in the state of the substantive Civil Law in India, and the expediency of framing and enacting a body of law for India based upon English Law, are very much in accordance with the views of the Law Commissioners in India.

We take this opportunity to report that a Petition from the merchants, traders, and residents of Singapore, for the appointment of a Resident Professional Judge, having been referred to us by the Commissioners for the Affairs of India, we carefully examined and considered that subject, and communicated our opinion thereon to the said Commissioners.*

We humbly submit this our Second Report to Your Majesty's Royal consideration.

JOHN ROMILLY. (L.S.)

EDWARD RYAN. (L.S.)

C. H. CAMERON. (L.S.)

JOHN M. MACLEOD. (L.S.)

T. F. ELLIS. (L.S.)

Dated the 13th day of December 1855.

We dissent from the above Report for the reasons stated in our joint Minute.†

JOHN JERVIS.

ROBERT LOWE.

* See Appendix B.

† See Appendix A.

APPENDIX.

APPENDIX A.

MINUTE by the LORD CHIEF JUSTICE of the COMMON PLEAS and the Right Honourable ROBERT LOWE.

We dissent from this Report.

The proposition, as we understand it, is, that whereas beyond the limits of the presidency towns there is no *lex loci* at all, this state of things is to be perpetuated until a complete code for India be framed, based indeed upon the English law, but every provision of which is subject to be reconsidered and remodelled, not only with reference to the customs and prejudices of the natives, but also to the principles of what may appear to the Commissioners the most enlightened jurisprudence.

We do not doubt that such a work, if ever it shall be accomplished, will be of great benefit to India, but it is certainly one of no ordinary difficulty and delicacy. It must be at once adapted to the highly artificial state of society of the Presidency towns, and to the comparatively rude and primitive communities of the mofussil. We cannot admit the necessity of keeping India without any *lex loci* at all till this gigantic task shall have been performed, unless there be no alternative.

Such an alternative, we think, exists. The English law, up to 1726, is already administered in the Presidency towns, and we cannot understand why it should not be extended, so far as it is applicable, to the mofussil. The introduction of a *lex loci* would be thus made easy and speedy; and the time of the Commissioners would be taken up, not in passing over the whole field of substantive law, but only such parts of it as it might be necessary to alter or exclude in order to adapt them to the exigencies of a country like India. It is thus that law is imported into our colonies; and imperfect as the system may be in theory, every one acquainted with it knows that it works exceedingly well. No doubt the law would require much more alteration to make it apply to India than to a British colony, but the difference between the two cases appears to us to be of degree rather than of kind.

It may be said that though this might work in the Presidency towns, the native moonsiff or sudder ameen, and the vakeels who practise before them, having no access to reports, and no profound legal knowledge, would be unable to administer English law in the manner in which it is administered by English lawyers. This is quite true, but we fear will apply nearly as much to one system as to the other. If the proposed code be really worthy of the name, it will be at once too cumbrous and too minute for the use of mofussil judges; and a brief abstract of rules and principles, prepared under the authority of Government, must be circulated for their use. The same thing can be done if we adopt the law of England as it stands, the only difference being, that we shall not have the trouble and delay of making a code which when made will be too complicated for the people for whom it is designed.

It may be said, that the plan of the Commissioners and the plan which we suggest are not incompatible, and that there is no reason why English law should not be introduced at once, to be superseded by the code as soon as it is prepared. But this would be only making one innovation in order to efface it by another. It is a very different thing to introduce the law of England as it stands from adopting only so much of the law of England as, after careful examination, the Commission might think fit to re-enact. The questions of the validity of promises without consideration, of requiring certain contracts to be in writing, and of the attestation of wills, might easily be decided in different ways in the two codes. The reproach that has been brought on the English law has principally arisen from its technical procedure and divided jurisdictions. The substantive law has also its faults; but it is a system which can be worked, and, being sufficient for us and our colonies, would, we think, be a great boon to a country in which it is hardly an exaggeration to say there is no law at all. For these reasons we cannot bring ourselves to consent to the postponement of an immediate and practical good so greatly needed, until the proposed substantive law of India shall have been elaborated.

JOHN JERVIS.
ROBERT LOWE.

APPENDIX B.

Sir,

India Board, 26th October 1855.

The Commissioners for the Affairs of India having determined to refer the petition from the merchants, traders, and residents of Singapore for the appointment of a resident professional judge for the consideration of the Indian Law Commission, under sect. 29. of the recent Act for the Government of India, I am directed to request you to bring the petition before the Commissioners, for their report and opinion.

I am, &c.

To J. A. Hawkins, Esquire,
&c. &c. &c.

T. N. REDINGTON.

The Petition of the undersigned Merchants, Traders, and other residents at Singapore, in the Straits of Malacca,

Humbly sheweth,

1. That in the year A.D. 1807 His Majesty George the Third was graciously pleased to grant a royal charter establishing the Court of Judicature of Prince of Wales' Island, and that His late Majesty was also pleased to appoint a recorder to administer justice, with the assistance of the heads of the executive authority acting as lay judges.

2. That at the time when the said charter was framed the resident population of Prince of Wales' Island was estimated at only fourteen thousand; that the judicial machinery of the Court, although at that time adequate to the then existing circumstances of the place, the increase of the population and trade, and necessarily an augmentation of judicial duties, was not followed by any addition to the Court establishment; on the contrary, the duties of the recorder were more than doubled in A.D. 1827 by the existing charter of the Court, which extended the jurisdiction of the Court established at Prince of Wales' Island to Singapore and Malacca,—the said several places, Prince of Wales' Island, Singapore, and Malacca, being each separated by sea from the other of them by a distance of nearly two hundred miles,—compelling the recorder to make periodical visits at each station, instead of residing at Prince of Wales' Island, as theretofore.

3. That under a free-trade policy and liberal government, aided by no adventitious circumstances or the discovery of vast mineral wealth, the United Settlement of Prince of Wales' Island, Singapore, and Malacca—but Singapore especially—has attained an unexampled position of prosperity, as a reference to the statistical abstract in the margin, derived from official sources, will abundantly prove. From the marginal abstract it will be seen that, since the establishment of the court of judicature at Prince of Wales' Island, the resident population has increased more than sixteen fold, whilst the value of the import and export trade since A.D. 1826 (the date of the existing charter of the court) has nearly doubled itself,—the resident inhabitants comprising Europeans, Eurasians, Armenians, Jews, Parsees, Chinese, Malays, natives of British Continental India, Javanese, Cochinese, Singalese, Siamese, and other natives of the Archipelago, all speaking different languages and professing various creeds.

Population of P. W. Island in 1807—14,000.		
<i>In the year 1810.</i>		
Population of P. W. Island	27,998	Imports £ 516,103
Province Wellesley	3,692	Exports £ 280,521
	31,690	£ 1,106,924
<i>In the year 1826-27.</i>		
Population of P. W. Island	37,242	Imports £ 847,212
Province Wellesley	18,042	Exports £ 567,502
Population of Singapore	12,307	Imports £ 1,432,775
Population of Malacca	33,192	Exports £ 138,133
Total population of the United Settlement	101,453	£ 4,284,590
<i>In the year 1852-53.</i>		
Population of P. W. Island (1850-51)	67,933	Imports £ 577,100
Province Wellesley (1850-51)	28,143	Exports £ 782,583
Being the last census.		
Population of Singapore (1850-51)	50,943	Imports £ 3,236,025
Being the last census.		Exports £ 2,730,071
Population of Malacca (1847)	34,005	Imports £ 78,926
Being the last census.		Exports £ 63,849
Total population of the United Settlement	222,044	£ 7,516,569
N.B. The intermediate Trade of the three stations for the year 1852-53 was £1,202,002, which amount is not included in the above statement.		

4. That the increased population and trade of the Straits Settlement has not only greatly augmented the duties of the recorder or professional judge; the executive functions of the lay judges of the court have proportionably increased, and have become so multifarious as almost wholly to engross their time and attention. The general administration of justice devolves on the recorder, whose visit, on circuit, to one of the stations, causes a temporary suspension for several months of all judicial business at the other station. That your petitioners desire to press upon the attention of your Lordships that the absence of a legal education not only disqualifies the lay judges to adjudicate in cases involving questions purely of law, or partly law and partly fact, that there is sometimes a clashing between their judicial and executive functions which necessarily obliges suitors either to

wait for months the arrival of the recorder on circuit, to abandon their suit altogether, or to place the lay judge, if disposed to officiate, in the anomalous position of adjudicating cases where the executive is more or less interested in the result.

5. That your petitioners call the attention of your Lordships to the fact that the recorder, (by the provisions of the statute 11 Victoria, cap. XXI.) being the sole judge of the Court for the Relief of Insolvent Debtors, the operation of that humane measure is necessarily limited, and its working and influence so restrictively confined as in a great degree to frustrate the intentions of the legislature, whilst during the judge's absence from the other stations in the settlement every facility is afforded and availed of by fraudulent debtors to conceal, make away with, and place their property beyond the jurisdiction of the Court, to the great injury of creditors.

6. That your petitioners respectfully urge upon the attention of your Lordships the present position and growing importance of Singapore, and the necessity which exists for the appointment of a resident professional judge. In addition to the permanent population, numbering sixty thousand, more than fifty thousand persons annually visit the port for trade purposes, arriving in the fair monsoon and departing before the adverse monsoon sets in; that the length of time intervening the honourable the recorder's return on circuit operates prejudicially in the administration of justice in criminal cases, owing to the departure of witnesses, who in many instances arrive here for commercial purposes, and who depart before the sessions of Oyer and Terminer take place.

7. That for many years the ordinary judicial business of the Court at Prince of Wales' Island and at Malacca has been and continues to be wholly suspended (except when the recorder is present), and no processes are issued during his absence; whilst at Singapore, during the absence of the recorder on circuit, the urgent and ordinary duties of the Court have been and are conducted by the resident councillor, the Honourable Mr. Church; that notwithstanding the high opinion and respect entertained by your petitioners for the integrity, talent, and zeal uniformly exercised by the present resident councillor, the increasing duties of that functionary in his executive capacity necessarily encroach on and must at an early period deprive your petitioners of his valuable services in disposing of the judicial business of the Court. Moreover, as the performance of these judicial duties is honorary, their exercise is not only uncertain, but obviously depend on the will, convenience, and possible fitness of the resident councillor.

8. That your petitioners respectfully call the attention of your Lordships to the existing provision in cases of appeal. An appeal is allowed from the Court of Judicature to Her Majesty's Most Honourable Privy Council only when the amount of the suit is ten thousand rupees and upwards. In newly-formed settlements property is usually of a moveable description and of moderate value. As civil and equity suits are instituted chiefly for amounts far under the above-named sum, the limitation acts as a bar to an appeal. No appeal from the Straits has been prosecuted before Her Majesty's Most Honourable Privy Council, principally for the reason assigned by your petitioners, who respectfully submit that an appeal is not only a matter of right where suitors feel aggrieved by a judicial decision, and where reasonable grounds exist, but that substantial justice requires such a course; your petitioners therefore beg humbly to suggest to your Lordships that a tribunal having an appellate jurisdiction in cases involving sums above five hundred dollars might be so framed as to meet the wants of your petitioners; and further, your petitioners are of opinion that your Lordships will confer lasting benefits upon all British subjects in the Straits of Malacca by your Lordships recommending the organization of an appeal tribunal at Calcutta, with the privilege of a final appeal to Her Majesty's Most Honourable Privy Council in cases where the amount of the suit is five thousand rupees and upwards. The similarity of religion, habits, manners, and customs of the people of the Straits of Malacca and Bengal suggests an additional advantage in establishing the court of appellate jurisdiction prayed for.

9. That by the existing charter of the Court of Judicature, the licensed practitioners of the said Court may at any time be silenced on the mere motion of the recorder or lay judge who, "either assigning a reason [or] without assigning any reason whatever," may withdraw or vacate the licence of any and every practitioner, without reference to the convenience of suitors or justice to the practitioners, and without affording them an opportunity of being heard in defence;—a measure repugnant to the liberty of counsel, and subversive of that spirit of independence, integrity, and constitutional bearing characteristic of the bar, essentially necessary to the profession, and the due administration of justice in all courts of judicature.

10. That the greater portion of the civil causes heard and disposed of in the said Court of Judicature involve questions of fact which elsewhere are ascertained and determined by a jury selected from the most respectable and intelligent part of the community, whose local experience and knowledge of the manners, customs, observances, and course of procedure amongst all classes of the community eminently qualify them to judge of and resolve matters of fact. By the existing charter of the Court the bench is embarrassed by having to perform the part of a jury as well as act as a judge in all civil cases.

11. That your petitioners have, on various occasions during the past ten years, petitioned the Supreme Government of India on one or more of these momentous subjects; they have also petitioned the Board of Control for the Affairs of India, and likewise memorialized the Court of Directors of the East India Company; but hitherto without effect. The petitions and memorials, although forwarded through the authorized channel, the local government, have not even been acknowledged by the authorities to whom they were respectively addressed.

That the whole question of judicial legislation for India having been referred by both Houses of Parliament to the consideration of a Commission, your petitioners most humbly and most earnestly pray that your Lordships will give your favourable attention to the prayer of this petition, which is, that a resident professional judge be appointed, that the independence of practitioners of the Court be secured, that a Court of Appeal be established, and that a jury of three or five disinterested and qualified persons may sit and act and determine questions of fact arising on the trial of civil causes.

And your petitioners will ever pray.

M. F. DAVIDSON,
C. H. HARRISON,
H. J. MARSHALL,
&c. &c. &c.

Singapore, 14th March 1854.

Indian Law Commission, 19, New Street, Spring Gardens,
26th January 1855.

Sir,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter of the 26th of October last, referring to them, for their report and opinion, a petition from merchants, traders, and other residents at Singapore, for the appointment of a resident Professional Judge. The Commissioners having had that petition under their consideration, direct me to convey to you the following observations, for the information of the Commissioners for the Affairs of India.

It appears to the Indian Law Commissioners to be beyond doubt that in consequence of the great increase of population and trade at Prince of Wales Island and Singapore, a single professional judge, dividing his time and services among those two settlements and Malacca, is not sufficient to meet the wants and wishes of their inhabitants.

The Commissioners think that the prayer of the Singapore petitioners for the appointment of a resident judge at that settlement is reasonable, and ought to be granted; but inasmuch as Malacca is much nearer to Singapore than it is to Prince of Wales Island, the Commissioners think that the resident professional judge to be appointed for Singapore should make periodical circuits to Malacca, instead of the resident professional judge at Prince of Wales Island.

They would recommend that the selection of persons to fill these offices should be required by law to be made from members of the English or Irish bars of not less than five years' standing, or advocates of the Supreme Courts in Scotland of the same standing. They also recommend that a salary of 2,500*l.* a year be assigned to the Judge of Singapore and Malacca, and a salary of 2,000*l.* a year to the Judge of Prince of Wales Island, the excess of the former over the latter being intended to compensate the Judge of Singapore and Malacca for the expense of his circuits to the last-mentioned place; and further, that a pension of 700*l.* a year be allowed to each of these judges after a service of twelve years.

The Commissioners are of opinion that the plans of procedure, civil and criminal, which they are preparing for Bengal, will, with some modifications as to details, be applicable at the several settlements in the Straits.

They contemplate that the proposed Courts of Justice at those settlements shall have the same jurisdiction in all cases, civil and criminal, as it is intended that the Judges of the High Court to be established at Calcutta shall have; that is to say, jurisdiction in all cases, civil and criminal, excepting such cases as it may be thought fit to confide to Courts of Requests and Magistrates; and that in civil cases an appeal shall lie from the new courts to the High Court at Calcutta, acting in its appellate capacity, in like manner as an appeal will lie to that Court from the Judges of the High Court exercising original jurisdiction. A further and final appeal will of course lie to the Privy Council in cases where the amount or value litigated exceeds a certain sum.

In this way it appears to the Commissioners that the wishes of the petitioners on the subject of appeals will be met as fully as possible.

With regard to the wishes expressed in the petition, for the independence of the bar, and for trial by jury in civil cases, the Commissioners think that the law upon these points should be the same at the Straits Settlements as at Calcutta; and they do not intend to recommend trial by jury in civil cases.

The Commissioners think that all the necessary measures for the better administration of justice at the settlements in the Straits may be effected without any new Act of Parliament.

With the sanction of the Crown, and of the Court of Directors acting under the direction and control of the India Board, it will be competent to the local legislature of India to enact whatever law may be required for the purpose, except that the new Courts will not have the Admiralty jurisdiction now exercised by the Recorder's Court, unless provision for the same be made either by the Crown or the Imperial Legislature.

I have, &c.

To Sir Thomas Redington, K.C.B.,
India Board.

J. HAWKINS, Secretary.

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Number of Judges for the
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Judicial 1886 High
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13 March 1886

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