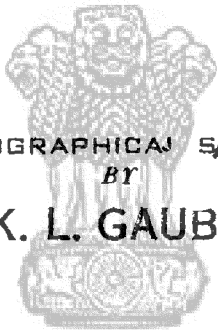


Rt. Hon. SIR SHADI LAL, P. C

The
Rt. Hon'ble Sir Shadi Lal

CHIEF JUSTICE OF THE HIGH COURT
OF JUDICATURE AT LAHORE
1920-1934

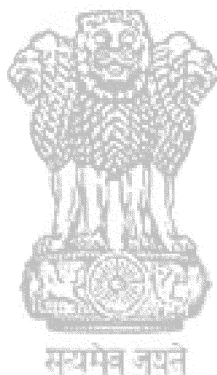


A BIOGRAPHICAL SKETCH
BY

K. L. GAUBA

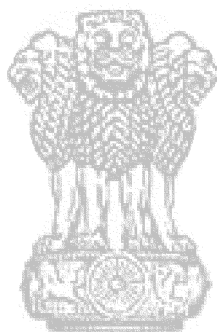
सत्यमेव जयते

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Rt. Hon'ble Sir Shadilal



सत्यमेव जयते

By the same Author.

Uncle Sham

His Highness

The Prophet of the Desert

The Rebel Minister

This England

The New Magna Carta

Leone

(A play in VII Acts)

PREFACE.

It is with some diffidence that I have attempted in this small sketch to reconstruct the career of the Rt. Hon. Sir Shadi Lal, first Indian to be appointed a permanent Chief Justice of any High Court. The effort has, however, seemed a natural and necessary corollary to "New Magna Carta," in which it was my melancholy duty to detail the career of his successor, Sir Douglas Young, third Chief Justice of the High Court of Judicature at Lahore. The history of a Court is largely the story of its Judges, and these two books now generally cover the history of the Lahore High Court from its inception down to the events leading eventually to the departure of Sir Douglas, unmourned and unsung.

Those who read "New Magna Carta" and believed it—and there were a few who did—must perforce have a jaundiced view of the administration of justice but much has happened since the advent of Sir Trevor Harries, the distinguished Chief Justice of the Patna High Court, to Lahore to restore public confidence. I trust that this present book will help to recall happier days in the annals of the provincial judicature.

I may be allowed to say a word as to the method I have adopted. It has been my endeavour throughout to set out in simple and unostentatious language the principal facts in the life of Sir Shadi Lal. There is a

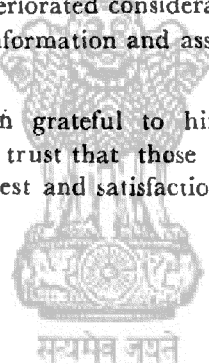
great deal more that could have been said and perhaps with greater emphasis but I have tried to paint a general picture upon a canvas of modest proportions of what kind of man the learned Chief Justice was: I have also endeavoured to elucidate briefly the main occasions upon which he appeared as an arificer of the law.

It is, however, a matter of very great regret that during the progress of the work upon this book, Sir Shadilal's health deteriorated considerably and I was thus deprived of much information and assistance to which I had looked forward.

However I am grateful to him for his general encouragement and trust that those who read this will get some of the interest and satisfaction the author has had in writing it.

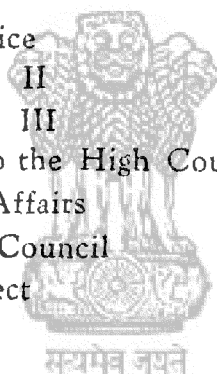
Shahchirag Chambers,
LAHORE.

K. G.



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CHAPTER I.

Of Judges and Justice.

With due respect, High Courts may be likened to first class stores. Here you expect to get the best justice for your money. The recent history of a certain Court has shown that justice is not to be measured by the number of its judges—for, all judges, unfortunately, do not always do justice. If every judge can be said to do justice, it is arithmetic that more judges mean more justice. But more justice is different from better justice. While, therefore, more judges record a greater out-turn of work, the work of a judge being justice, we would have more justice, but it does not follow that we have any better justice. All judges have not the same ideas of justice. This is now generally recognised, otherwise, there would be no conflicting decisions and no appellate tribunals.

सत्यमेव जयते

To be just is one of the most lauded attributes of human nature. But how few people judge pass judgments against their own predilections and preconceived ideas. While every one of us has almost daily opportunities to pass judgment on our fellow beings, very few of us have the occasion to see those judgments enforced. But those who are selected to sit upon the seats of judgment, and to have the sanction of state and society behind their verdicts have an additional responsibility, for, if their decisions are against law or against conscience, they do the public wrong. Unfortunately, not all who sit in the exalted seats of judgment are inspired with these fears. If a judge was as liable as the motorist for negligence and errors of judgment, we would have better justice. If no severer penalty than censure lay for mistakes in respect of convictions for murder, there would be a conspicuous drop in the number of executions; if damages lay for illegal imprisonment, there would be less convictions. But the administration of the courts could not be carried on if judges were open to suit and prosecution. As a matter of public policy, therefore, and, as a heritage of the notion that the judge represents the King, and the King can do no wrong, a judge is generally beyond the process of the courts. Unfortunately too many judges interpret a notion of infallibility too literally.

It is also an interesting question whether there is any practical difference between law and justice. Justice

in its wider sense is the perfect arbitration upon merits and motive, but justice as conceived by most students of law is the administration of arbitrary rules of conduct and judicial procedure, which is law. Hence the interpreter of the law is (somewhat euphemistically perhaps called a 'Mr. Justice'. But law and justice may be in conflict. According to a strict code of justice an I. O. U. should never be barred, but law limits the claim to one made within a specified period of time. Judges administer law not necessarily justice in terms of ethics or equity, for equity has been held to follow the law. The interpretation of the law differs, hence conflicting judgments and the huge volumes of the case law. Claims are decreed or dismissed, prosecutions are secured and sentences are passed based as they are upon law. Conflict in the case law implies somebody has been wronged, some judge has erred, and has not seen things, as he should have seen them.

We do not in this appraisal of justice as administered by the Courts refer to any particular court. These remarks would apply to any court in any part of the world. But in a sense it is of special concern in India, where there are other factors that count against the correct administration of justice. The aim of every cultured society is to administer justice through law. The law changes as the sense of society towards justice alters. Too many judges conceive of law as a soulless monster that demands and must be fed. But law is not

so hideous; the law has a spirit. He is a great judge who can interpret the spirit of the law in the terms of the conscience of mankind.

While history can point to great judges in India giants of legal learning as Sir Asutosh Mukerjee and Mr. Justice Mahmud, kindly and sympathetic judges as Sir Lawrence Jenkins and very many others conspicuous for their independence, their patience, their modesty, it cannot be said the administration of justice in India has always been entirely satisfactory. The principal reasons for this failure are threefold. Firstly, from the lowest judgeships to the highest, communal, racial and service considerations play a considerable part in selection of suitable candidates. Secondly, a judgeship is of-times a price for other services. Thirdly, the maintenance of a political complexion in the higher judicial services and the desire to maintain the prestige of an oligarchy.

The litigant seeks the processes of the law for justice. The accused in the dock looks to the law for the same object. Rightly or wrongly both are distinctly dissatisfied with present conditions. That is why Mahatma Gandhi's boycott of the courts was so successful for a time. But Mahatmaji gave no alternative. Something is better than nothing and litigants sought the lesser of two evils. To the average litigant or accused, justice is often far removed from the courts

Delays used to be one obstacle, but High Courts generally have accelerated disposals. But efficiency has, in many cases, been sacrificed for speed. Judges in many Courts are imbued with the desire to 'finish' their cases. High Courts are pleased generally with 'finished' cases. It would be more interesting to enquire whether justice has been done. Exorbitant court fees are charged. Efficiency is debatable. Judges generally are overworked. But with all these efforts, the wheels of justice today grind slow and exceeding indifferently. The subordinate judiciary is ill-paid. Standards of living are progressive. The temptation sometimes is irresistible, even to the most conscientious. One often hears of cases where the chariot of justice is stated to have been hired. It is known that corruption is not confined to lower departments of the state. Sometimes the highest officials are involved. One cannot eliminate this entirely.

What is true of civil cases is perhaps more true in criminal cases and in the liquidation of big companies and estates. In a certain district, it has been popularly known that warrants may be issued for a hundred rupees, and the same warrants are cancelled for another hundred rupees. Prosecutions in which prominent people are involved are often gold mines not only to defence counsel but oftener to the police and sometimes to occupants of the Bench. Pabulous amounts on occasions change hands. In Indian States, of course, this sort of thing is done more or less openly. It is understood. In British India, it is not understood, and severe penalties are im-

posed in a found out case. The evil therefore runs underground. But no man with any knowledge of the working of the Courts—particularly from recent events—can say that there are not subterranean passages of graft. The evil is not confined to India. It is a very common in the United States, in France and even in Germany. It is much less the fault of individuals than of the system, that often assumes judges above the law they administer. If judges were paid well, and had jurisdictions somewhat commensurate to their salaries, the evil would be lessened. But large salaries, high positions and emoluments do not, necessarily, guarantee honesty.

In the efficient administration of justice, it is necessary that the morals and scruples of the Bar should be high. Counsel should dissuade and not encourage litigants from the by-ways of success. The bar should take adequate fees and render adequate services. They should inspire the respect of the judiciary. The colossal influx of every year of hundreds of recruits to the profession, the incredible extent of touting are outstanding causes for the loss of prestige of the most distinguished of time-honoured professions. When there are scores of members of the Bar who are willing to let the tout take two thirds of the fee, in what estimation should the public hold the profession; what independence of character can be expected, and what honour from the Bench? It is a sad commentary on the state affairs that

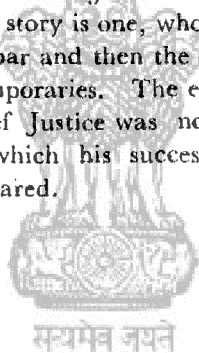
there are gentlemen hanging around the courts, who are only too willing to put in five appearances for a rupee and to do a High Court revision for ten annas.

Before all Courts come claims that are genuine and claims that are false. The purpose of the law is to decree the genuine and dismiss the false. The machinery of the Courts is for the purposes of sifting the grain from the chaff. When the court fee on the plaint or application has been paid, the litigant has paid for the justice he is to receive or the adjudication that he seeks. The administration of justice in certain places is free. It is one of the functions of Government to administer justice, to arbitrate between disputants. Many governments, generally, render this service free, the expenses under this head being charged to the General Revenues. But litigants in this country pay for justice and pay high. It is all the more necessary that cause should be heard and determined with care. The adjudication of claims should be quick, but not beyond the speed-limits of caution and care, decisions should be untainted with bias, and in criminal cases political or social considerations should not weigh. The judicial departments should be conducted as a first class department store, where justice is dispensed with the anxiety with which the price has been fixed, every purchaser getting hundred per cent value for his money. Not only would custom and revenue rise, but it would become a honoured name among those that seek its wares.

This book deals with an era, when justice was far

from expensive, when it brought satisfaction to the people, when the bar reared giants and ability was conspicuous in the bench, when judges heard cases without hurry and wrote judgments that might with advantage be persused, when they are forgotten.

Yes, this book deals with a great era, the last years of the Punjab Chief Court and the early years of its successor, the High Court of Judicature at Lahore. The central figure in this story is one, who from an early age dominated first the bar and then the bench, and, in both spheres, his contemporaries. The era of Sir Shadi Lal, first permanent Chief Justice was not only a tradition, but a measure, by which his successors will for many generations be compared.



CHAPTER II.

The Chief Court.

The history of the judicial system and the judiciary in the Punjab is full of interest and instruction. The administration of law under the British regime had its birth soon after the close of the Sikh Wars and in the last hundred years has attained to a vigorous if not entirely winsome manhood.

Before the consolidation of the territories north of Delhi under Maharaja Ranjit Singh, the domains of this Ruler were split up into several small divisions under petty chiefs. The population was largely illiterate and crime was no stranger. There were classes and tribes of hereditary and professional criminals, who made life miserable and property fair booty to the strong. At this time there was no uniform system of law, judicial procedure, nor a common authority to enforce society's

sanctions. The aim of the local and tribal chieftain was to make as much money as possible out of the disputes that came before him. He who gained his point paid '*Shukrana*', and he, whose pleas were cast aside, paid a '*Jurmana*' or fine. Although this estimate may be an exaggeration, yet it gives a fairly correct idea of the condition of life and law in the era of Sikh rule in Punjab.

Even under Maharaja Ranjit Singh, it can be safely averred that there was no organized judicial system and no laws to regulate the rights obligation of the people *qua* the State and *inter se*. Might was right. There were supposed to be certain customs prevalent amongst the different tribes and various communities. But if any one chose to disregard them, there was no court to enforce the right and claims of the party aggrieved. Two classes of officials were known—military and fiscal. The latter class were assigned civil functions such as they were. There were no special officers or Judges as such, either for the purposes of dispensing of justice, or for the administration of the criminal law. Private arbitration in the form of '*Panchayats*' was extensively resorted to and (considering the recent policy of the Unionist Party) were all that the people apparently needed. No judges, no suits, no court-fees and no lawyers—above all no lawyers !

The unwritten penal code, so termed, contained but two penalties, fine and mutilation. There was hardly any crime, which could not be expiated by fine. If

murder was committed in a village the whole village was penalised, and had to pay the penalty known as '*Chatti*', even though the real culprit was found. Capital punishment, was rarely resorted to. The very idea of a judiciary as a separate department of the state was foreign to the minds of the rulers of that age.

Following the annexation of the Punjab by the British in 1849, the administration of justice was placed under a Board consisting of three members. This Board acted jointly in matters of importance, but generally separately in their respective charges. Each member had charge of one of the functions of the Board, which were classed as Political, Revenue and Judicial. The Province was divided into seven divisions each administered by a Commissioner. In 1850, the present districts of Peshawar, Kohat and Hazara, which had hitherto been under the direct control of the Board, were formed into a separate division. The divisions in the Punjab were sub-divided into twenty-seven districts, each in charge of a Deputy Commissioner, who was provided with a staff of convenanted Assistant Commissioners and unconvenanted Extra-Assistant-Commissioners. Each district was further divided into *tahsils* for the collection of revenue, and into Police circles. The Commissioners were to be Superintendents of Revenue and Police, and to exercise the civil appellate, and original criminal powers of a Sessions Judge. The Deputy Commissioners were given subordinate civil,

criminal and fiscal powers, combining in one person the different aspects of administration, and thereby increasing its vigour. This system remains very much as it was then.

The English came from a country, where the 'Rule of Law' was predominant, and where every man was amenable to the law of the land, and no man could claim to be above the law. They were, therefore, it may safely be surmised perturbed by the absence of law and security prevalent in the province. The Board of Administration felt the necessity for an organised administration of civil and criminal justice, though they were alive to the difficulties that had to be encountered. Thus in the Administration Report for 1849—50 is stated that, "we can hardly consider that civil justice has advanced as satisfactorily as the other branches of the administration. Indeed, we are not sure that it will ever be successful. There is no part of the British system so difficult to popularise." This was perhaps too pessimistic a view considering the rapid advance made a few years later and the brilliant galaxy of legal talent that was forthcoming, and which in time made Punjab at once the pride and the envy of other Provinces of India.

When the Punjab was annexed, the English had already some experience of judicial administration in other parts of India, and knew some of the difficulties that had to be encountered in the introduction of the system. From the outset certain important reservations were

made as a result of the experience gained in other Provinces. Accordingly, in the Civil Courts, the rules current in the Sutlej Division were from the first observed as they were deemed to ensure 'substantial justice unfettered by technicalities'. Subsequently a Punjab Civil Code, largely sufficient to meet the growing requirements of a commercial and agricultural community, and embodying much of the customary law of the Province—as like every truly conquering people, the English while imposing their own laws, respected the prejudices of the people; and as from the very date of the annexation of this Province, it was accepted, as a principle, that practically all questions affecting the family and daily life of the agriculturist should be decided, according to custom, so far as it was equitable.

This 'primitive Code' has expanded, until the general civil law in the Punjab is much the same as in the rest of India, though every Province has its special customary law. In the years that followed the annexation, there was none of that division of functions to which we have since become accustomed. An officer was a judge as well as an administrator, and the system though simple was not wholly unsuited to the needs of the time. The board of administration was abolished in 1853, and the Chief Commissionership established with John Lawrence as Chief Commissioner. At the same time two principal Commissioners were appointed for the judicial and official benches of the administration. But the judicial

commissioner was an officer who performed a variety of functions. Not only was he Chief Judge of Appeal and of Assize, not only did he exercise the powers of the Sadder Nizamat and Dewannee Adwlat in the Regulation Provinces, but he held the portfolios as we say in these days, of Appeals, Public Works, Local Self Government and Education.

Three years later in 1856, Sir John Lawrence was able to record that civil justice had been rendered speedy, cheap and easy in a high degree; that brief and intelligible principles of law had been circulated and a simple procedure introduced, that the criminal administration had extinguished or repressed forms of heinous crime, had diminished even the more common crimes and had secured vigour and promptitude in despatch of cases. That, was a well deserved, encomium on those responsible for the then administration of justice. We miss perhaps some of the qualities we should expect to find mention in a description of a more highly developed system, but the simple judicial virtues, virtues of which the value does not decay with time and elaboration were all there, certainty, simplicity, vigour and despatch.

In spite of this, volume of litigation increased rapidly and it became necessary to expand the judicial machinery. On the 19th February 1866, the Chief Court was opened, the Court consisted of two Judges, A.A. Roberts, upto then Judicial Commissioner and Boulnois a Barrister who had presided over the Small Cause Court

at Calcutta. It is interesting to find that in the year 1866, the number of suits instituted in the Civil Courts of the Province was not far short of what it was 50 years later. A chronicle of the time would tell us that more suits were instituted in the Punjab than in Bengal, Oudh and the Central Provinces put together. In 1866, the number was 1,66,000 and the total for 1916 was not more than 20% higher. In its first year the Chief Court disposed of 1300 appeals. They took on the average less than six weeks each to decide and more than 70 per cent were rejected *in limine*.

But the creation of the Chief Court was not the only event that made the year 1866 a landmark in the judicial history of the province. Two other innovations were made in that year which have exercised potent influence on the evolution of our judicial system. The first of these innovations was the application to this province of the Civil Procedure Code and the second was the admission of pleaders to practise in the Courts. The number admitted to practise in the Chief Court in that year was seven, while the remaining four hundred courts scattered over the 32 Districts of the Province had to be content with four. In those days, it paid to be a lawyer.

Work went on increasing rapidly with the development of the Codes and the growth of the legal profession, and it was found necessary to add a third Judge as early as 1869. It was not till 1886 that the permanent strength of the court was raised to four. For 18 years more

the court struggled on with the assistance of temporary Judges against the ever rising tide of work, and in 1904, when the strength of the Court had to be doubled temporarily to enable it to cope with its arrears, it was held that a case had been made out for the addition of one more Judge to its permanent strength. From that date till the time when the Chief Court became a High Court, there were never more than five permanent Judges, though it was long patent that the two temporary Additional Judges were temporary only on paper and additional only in name.

By Act XIX of 1865 the following seven grades of Civil Courts had been established in the Punjab :—

(1) The Court of the Tahsildar with powers to try suits not exceeding Rs. 3000 in value.

(2) The Court of the Assistant Commissioner with ordinary powers to try suits upto Rs. 100 in value.

(3) The Court of the Assistant Commissioner with special powers to try suits not exceeding Rs. 500 in value.

(4) The Court of the Assistant Commissioner with full powers to try suits under Rs. 10,000 in value.

(5) The Court of the Deputy Commissioner with powers to try suits without limit of value, and to hear appeals from the decision of the first three classes of Courts.

(6) The Court of the Commissioner with powers to try suits without limitation in value and to hear appeals from the decision of Courts (4) and (5) above.

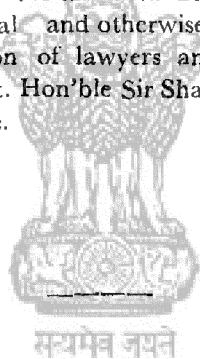
(7) The Court of the Judicial Commissioner subsequently merged in the Chief Court, Punjab.

As the volume of litigation increased, it became necessary to expand the judicial machinery of the Province. By the Chief Courts Act (XXIII of 1865) the office of the Judicial Commissioner was abolished, and on the 19th February 1866, a Chief Court was established consisting as already stated in the first place of two Judges, Mr. A.A. Roberts, as first Chief Judge, and Mr. C. Boulnois, as Puisne Judge, and was constituted a final authority in both civil and criminal cases, with powers also of original criminal jurisdiction in cases where European British subjects were concerned. Every European British subject had hitherto been triable exclusively by the High Court of Bengal, when charged with serious offences. Upon the Chief Court was also conferred extraordinary original civil jurisdiction in special cases.

The Chief Court of the Punjab, though inferior to a High Court in name and substance, proved fertile ground for the development of the English Common Law in its most attractive forms. The new jurisprudence rapidly rooted deep in the affections and the respect of the people. The judicial system introduced by Lawrence

and Canning flowered with great Judges and eminent counsel.

It is at this time and in these environments, in an out of the way village, that the greatest of them was born, one small in stature, but a giant among his contemporaries and among those that had preceded him, whose career will for many generations be an inspiration to all those who woo the law with devotion, whose pronouncements judicial and otherwise will command the respect and attention of lawyers and courts for many decades to come—Rt. Hon'ble Sir Shadi Lal, as he was to eventually to become.



CHAPTER III.

Early Years.

Though Lahore, as the metropolis, has enjoyed the benefits of the talents of the illustrious sons of the Punjab, she has in the case of many of such persons, not been either the birth place or the cradle of their childhood. Lala Harkishen Lal was born actually outside the borders of the Punjab, as it is now, at Dera Ismail Khan; Sir Ganga Ram was born at Jhang and Sir Fazl-i-Hussain at Batala. To Rewari in the Gurgaon District must go the credit of finding the first Indian to attain to the eminence of a permanent Chief Justice of a High Court established in India by Royal Letters Patent.

Shadi Lal, "as he then was, was born in 1872, of a family which was well known in and around the neighbourhood of the ancient town of Rewari. According to local standards they were well off. Business was good

generally and comfortable margins were made by those who followed the vocation of general merchants.

From his earliest days, Shadi Lal showed a brilliance that was exceptional and which left his contemporaries gasping. Languages, classical and modern, came to him with ease, as if they were his mother tongue ; he handled mathematics, as if he was special gifted for them and he took to science with readiness. His parents rightly decided that he should have the fullest opportunities of exploiting his very exceptional talents.

Once the Matriculation had been passed, Rewari became too small a place for Shadi Lal. Lahore was the logical consequence.

Under Dr. Ewing, the Forman Christian College was rapidly rising to eminence as one of the more important scholastic institutions of the new Punjab. As his contemporaries, Shadilal had many who have since contributed to the greatness of this province in its many spheres of its native life. Shadi Lal took the unusually comprehensive combination of English, Mathematics Physics and Chemistry and Sanskrit for the Intermediate examination. In the results his name stood high in candidates attaining a first division standard.

The next four years were spent in the Government College Lahore, from where he graduated in 1894 and

took his M.A. two years later. For the Bachelor of Arts Examination Shadi Lal's subjects were the same as for the Intermediate with the omission of Sanskrit and Mathematics, but that did not, however, imply that he had lost interest in these branches of his studies. These were to be taken up later—and with advantage—at Oxford.

The result of the B.A. Examination was a matter no doubt of sincere happiness to his parents and the family generally as Shadi Lal topped the list in the Province and was granted the Government of India Scholarship after he had passed the M. A. This he won much as Lala Harkishan Lal had won it a few years earlier and as Mr. Manohar Lal and Kanwar Dalip Singh were to win later.

In these years, it appears, Shadi Lal was very much attracted towards a scientific career, and if it were not for certain influences at Oxford, India might well have celebrated the career of another Ramunajam or a Roy. The Punjab University awarded him the M. A. degree in Physics.

Physics and Mathematics were the predominant (but not exclusive) notes of his studies at Oxford. Sanskrit again returned to claim a major share in his interests and his outlook. Here at Balliol, in the prize College of the University, we find him continuing a firm career of conspicuous application; we find him winning scholarships that have only been won by the most

brilliant and continuing in his studies a range and catholicism outstanding among his contemporaries.

Reward, honours, prizes come in a quick succession.

Borden Sanskrit Scholar 1896; Honours in Physics and Mathematics 1898; Arden Law Scholar of Gray's Inn 1899; Honour's man of the Council of Legal Education 1899; special prize man in Constitutional Law 1899 and top man in the University of Oxford in the examination of Bachelor of Civil Law, 1898.

Shadi Lal, with so outstanding an academic career, had no difficulty in impressing those around him that here was intended a career of exceptional promise. Among those who were the first to recognise in him, not only a remarkable student of science and the classics, but a first rate lawyer was F. E. Smith, then a lecturer on Roman Law in the University of Oxford. After a comparatively short attendance at his lectures, Smith informed Shadi Lal that it was unnecessary for him to attend his classes any further as "you know as much Roman Law as I do, you need^{not} come to me any more."

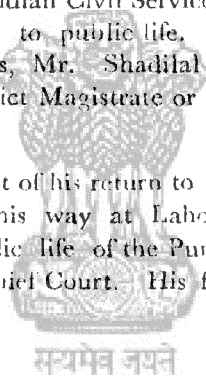
By strange coincidence F. E. Smith as Lord Birkenhead became England's youngest Lord High Chancellor and Shadi Lal became India's youngest Chief Justice.

CHAPTER IV

University and Legislative Council

Mr. Shadilal returned to India in the early part 1900. He was then twenty-eight years of age. His scholastic career, except in one respect had been a triumphant procession. He had taken great prizes and won unique honours. He was not successful in the competitive examination for the Indian Civil Service but the loss to the service was a gain to public life. As a Civil servant, with all his talents, Mr. Shadilal might have ended his career as a District Magistrate or perhaps as Financial Commissioner.

From the outset of his return to India, Mr. Shadilal decided to make his way at Lahore, which was then the centre of public life of the Punjab and the headquarters of the Chief Court. His first office was in a



unpretentious quarters in Shahalmi Gate just outside the city walls.

It would be incorrect to say that the first three or four years of his efforts in the legal profession were rewarded with either brilliant or spectacular success. But though there was a lean period of a very few years, it must be said that in comparison with his contemporaries and generally judged by the career of most lawyers, this period was an abnormally short one in the professional life of Mr. Shadilal. Enquiries made by the writer have elicited the interesting information that at the end of his third year at the bar, Mr. Shadilal was making enough to meet his expenses,—he was earning the sum of three hundred rupees a month !

Between the years 1900 and 1904, we do not find Mr. Shadilal's name of frequent reference in the law reports of the times, but, as already indicated, fame and success at the bar did not elude him for long. A reference to some of the cases won by Mr. Shadilal before the Chief Court will be made in the next chapter. Here I propose, briefly, to refer to those matters which are important in the life of any great man, and which, in their own way, contribute to eventual success, a normal homelife and an outstanding public career.

Mr. Shadilal married in 1890. His wife hailed from his hometown of Rohtak and came from a well-to-do family, which also carried on business.

Mr. Shadilal's father, Seth Ram Pershad lived to see his son become a judge of the High Court. His mother however died in 1876 when Shadilal was only four.

On January 1, 1909, in the course of the New Year honours of the year, Mr. Shadilal was created as a Rai Bahadur.

In the following year Rai Bahadur Shadilal won a spectacular success in the elections to the newly formed Punjab Legislative Council constituted under the Minto Morley Reform Scheme, defeating K.B. Mian Mohammad Shaf, in a memorable contest from the Punjab University Constituency. The seat, then carried with it the honcrific title of 'Honourable'.

Side by side with Rai Bahadur Shadilal's rise in the profession, which has yet to be referred to, went his rise in public life. The sphere of his political activities was not the sphere of his contemporaries generally. Lala Lajpatrai had connections with the then more radical elements and had been deported from India. He was only allowed to return after a lengthy exile. Lala Har-kishenlal and Lala Jaishi Ram introduced the Congress to the Punjab. R. B. Madangopal and Mahatma Hansraj propagated the new reformed Arya Samaj movement. R. B. Shadilal did not belong to any of the reformist schools. He was content with the general state of the Hindu political social order. He viewed radical ten-

dencies with suspicion, and represented strongly the conservative and cautious elements in the social polygarchy.

In 1912, Hon'ble R. B. Shadilal was called upon to preside over the Hindu Conference, an organisation that had been called into being to counter the movements set afoot in the country by organisations such as the All-India Muslim League of Mian Mohammad Shafi. The Hindu Conference eventually merged into the organisation now known as the All-India Mahasabha. The Muslim League under Mr. Jinnah is to-day the most important exponent of the Muslim point of view in India. By coincidence perhaps, the two most important communal organisations in the country were both started about the same time in the same province and promoted by members of the Punjab Chief Court Bar. Both these two bodies are all too vitally linked in the imagination and lives of the major communities of India to argue whether they should or should not have been promoted. Their value will be judged by history in the measure they contribute eventually to the solution of the national problem as a whole.

Under the Minto-Morley scheme, the Lieutenant-Governor presided over the deliberations of the Legislative Council. The scope of the activities of the Council were severely limited and one cannot look for any spectacular achievements, such as is now the fashion in the Legislatures of India. But for solid and useful work, the record of the Punjab Legislative Council could not furnish a better

example than the work put in by R. B. Shadilal in the debates over the Punjab Municipal Act, which was later enacted into law, and which has, generally, stood the test of time as an effective measure of legislation, a codified enactment applicable to all municipalities throughout the province. This act has also formed the basis of the recent bill adopted by the Punjab Legislative Assembly for the Corporation of Lahore, which, with comparatively minor modifications and adaptations, is, in many particulars, a *mutatis mutandis* reproduction of the Act passed by the Punjab Legislative Council in 1911.

From 1911 to 1934 that is to say for nearly a quarter of a century the Punjab University had the advice and counsel of Mr. Shadilal, first as an elected fellow and later as a fellow nominated by His Excellency the Governor. In the forum of violent domestic politics such as at times divides the Senate, Shadilal's roll was essentially that of the peace-maker. He was never a great partisan, tact ruled his career in politics at the Bar, on the Bench and eventually in the long career that was his as Chief Justice. Tact equally ruled his policy and career in the affairs of the University.

CHAPTER V

Fame at the Bar

Fame at the Bar came to Mr. Shadilal at an early age and at an early stage of his career. Called to the Bar in 1899, less than twelve years later saw him high among his contemporaries. The Punjab Chief Court was then the home of giants—Rattigan, K. P. Roy, Madan Gopal, R. B. Lalchand, K. B. Mian Mohammad Shafi were names to conjure with. The legal profession in the Punjab was at its zenith. Into this galaxy of talent, Shadilal took his place naturally and comfortably in a manner that was surprising. Looking back into the volumes of the Punjab Record of those days, it is difficult to believe that Shadilal had ever the briefless stage in his career, the difficult ladder by which all who seek the plums must climb.



The reported case law of the time shows that by 1910 and 1911 Shadilal had an enviable and lucrative clientele and figured on one side or another in the well-known cases of his day, and call it luck or talent—generally on the winning side. Among the clients for whom R. B. Shadilal appeared, at this time, may be mentioned, the Maharaja of Jaipur and well-known firms of Delhi such as the Delhi Woollen Mills and Delhi Cloth and General Mills.

The Maharaja of Jaipur came up to the Chief Court in an appeal which happened, however, to become a cause celebre. The Maharaja had lost in two Courts below, it having been found against him, that his delay in suing now disentitled him to relief. The defendants, whom it was sought to oust, had raised valuable buildings upon the land of the Maharaja. The findings were that the defendants had acted in good faith. R. B. Lalchand appeared for the respondents while Mr. Shadilal represented the plaintiff Maharaja. The Court came to the conclusion that the plaintiff's suit must succeed (1910 P. L. R. 99).

In 1914 the Government of the Punjab recognising the position to which Mr. Shadilal had attained at the Bar and in public life conferred on him the title of Rai Bahadur. There were not many Rai Bahadurs in those days and the distinction had the flavour of eminence and indicated a high status in the profession.

In the large number of civil cases to be found in the reports, it is difficult to discover the underlying secret of the rapid rise of Mr. Shadilal to the top rungs of the Bar. At this length of time it is almost impossible to reconstruct the atmosphere of the courts before which he appeared with such amazing success or to adequately represent the manner in which he presented his cases.

From the study of a large number of cases, however, it would appear that he usually won by an unexpected approach to a seemingly common problem. This is often a source of discomfiture to the adversary and takes a judge by surprise. A quiet and very serious manner, no doubt, effectively buttressed any weakness in the case. No success ever came to a lawyer without a reputation, well founded on fact, of industry and serious application in the preparation of his briefs and a careful study of the law. The cosmopolitan range of Mr. Shadilal's legal studies for the Bar and at Oxford, no doubt, contributed largely to his early success in the profession.

Out of the very considerable number of cases in which he figured, one case may be singled out for reference here a case which was a cause célèbre at the time and which is illustrative of the ingenuity in argument and pains in preparation of a case in which sheer advocacy was triumphant.

On the 13th May 1911, Major B. O. Roe, then Sessions Judge Amritsar, after a protracted hearing, during which all Amritsar and indeed the province itself was intrigued, sentenced a rich widow, known widely as Rani Bhagwankaur, to the extreme penalty of the law for the murder of her paramour, Kahanchand. The Rani's maid servants Thakri and Ruri were convicted and sentenced to seven years rigorous imprisonment each for the concealment of the body of Kahanchand.

After some adjournments, the case came up finally on the 3rd July 1911, before a Bench of the Chief Court. Sir Arthur Reid, Chief Judge presided. There sat with him Mr. Justice Kensington and Mr. Justice Rattigan. For the Rani and her servants appeared R. B. Shadilal; with him were Lala Raushanlal and Pt. K. Santanam. Mr. (later Sir) Alan Broadway represented the Crown.

There was no doubt that Kahanchand met his death during the night of the 20th February, 1911, from a heavy dose of white arsenic taken while staying at the Rani's house in Amritsar city. The house in question known at the Haveli was a large one with two considerable courtyards one on either side of the main building and with various out-buildings and offices, the whole surrounded by high walls and entered through a large main gate containing a small wicket. In deal-

ing with the appeal the Court had the assistance of a very carefully prepared wooden model of the whole premises made accurately to the scale of four feet to the inch, and constructed so that each storey of the main building could be taken off to show the exact position of the various rooms, passages and staircases concerned. The Court also, at the request of counsel inspected the building.

Practically the sole question before the Court was whether Kahn Chand was murdered or whether he committed suicide.

There was next to no direct evidence to go on, but the circumstantial evidence of murder was as strong as could be expected. The question, as stated by Mr. Shadilal, on behalf of the Rani, was whether the inferences to be drawn from the whole history of the case pointed as strongly to murder that the defence theory of suicide should be altogether excluded. The assessors at the end of a long trial had given it as their opinion that it was impossible to say whether the case was one of murder or suicide. The learned Sessions Judge did not share their cautious doubts and held that the charge of murder had been fully substantiated. His finding was based on a series of inferences expressed in forcible language.

The Rani's acquaintance with Kahn Chand began during a visit to that holy of holies, Hardwar, and conti-

nued for the best part of her visit there, namely July to September 1910. She was then staying in the Haveli belonging to the Poonch State, while Kahn Chand was its caretaker (*Darogha*) on the not very lucrative remuneration of rupees ten per mensem. Kahn Chand was in low spirit when the Rani appeared at Hardwar. He had recently lost his wife at Mirpur (in the Jammu State.) As to what transpired at Hardwar needed little imagination. There was no dispute that the Rani took a kindly interest in the youngman, then twenty-eight years of age and six years her junior. She flattered his vanity by various attentions.

It was also clear from a letter sent to Kahn Chand from a friend at Poonch that he was getting into serious trouble with his employers and likely to lose his post, which he did in fact do by resignation early in November. The Rani, however, held out prospects of employment in her own household. From letters sent by the Rani to Kahn Chand from November onwards, and from the fact that she sent him an unveiled photograph of herself there could be little doubt that the friendship had extended to intimacy. Certain passages in the Rani's letters, according to the Sessions Judge's description of them had been written "in a most amorous strain."

The whole series of letters, however, contained much that was comparatively trivial and save for the expressions already referred to, which could properly be under-

stood as relating to previous intimacy there was little in them to indicate that the Rani still entertained the passionate feelings for Kahn Chand which she had at Hardwar. On the contrary, it appeared that she had begun to take exception to the wild terms in which her erst-while lover had been writing to her. She alluded to the presents sent to him by her, at one time soap, at another medicine, and at another a few clothes, which were hardly the sort of things, which a wealthy lady would be sending to a favoured lover. She more than once indicated her readiness to give him the promised employment provided that he would send a formal application, which she could make over to her brother, who was managing her affairs. In one passage, wearying of his frequent reference to his deceased wife, she suggested that another wife would be easily found for him when he joined her establishment. In the February correspondence she indicated that she had no intention of tricking him out of the promised employment, but distinctly wished that he should first go to his home for two months and recover his spirits and adopt a more reasonable attitude to her, and told him plainly that if he returned to Amritsar he could not stay in her house. Whatever may have happened at Hardwar there was no doubt that the Rani's passion had by this time distinctly cooled. It was also apparent that Kahn Chand's friendship and persistence had begun to be embarrassing. The same conclusion was possible from the manner in which Kahn Chand was treated on a series of visits to the Rani

at Amritsar. He first came in October, staying for eight or ten days. He was then accommodated in the principal guest room on the first floor of the main building and treated royally. He came again for a longer period in January 1911, but this time his visit did not arouse the same welcome. He was lodged not in the *chaubara* close to the Rani's private quarters, but in a poor little room at some considerable distance from the main building and during this visit the Rani was so little taken up with her erstwhile lover that she went away to Majitha for a week or so while he remained at Amritsar.

Soon after he had left at the end of January, he pestered the Rani by asking to come again. She told him most distinctly that she did not wish him to do so. He disregarded her wishes and returned at 5 a.m. on the February 19. The Rani was clearly much annoyed, refused to see him or give him a lodging of any sort in the haveli and sent messages to get rid of him as soon as possible. Kahn Chand declined to go and announced his intention to sit dharna in the porch of the main gate. The Rani was naturally angry at this and at the same time afraid that if the man was forcibly expelled he would make a scandal in the neighbourhood. The position was admittedly one of some difficulty.

The next night Kalnuchand was dead—the result of arsenic poisoning, the arsenic having been taken in a glass of milk. His cries in agony had been heard by the servants; but, apparently, had aroused little sympathy.

Early next morning the Rani and her maid-servants were arrested with the body in a carriage, no doubt on the way to dispose of it.

Was it murder, or was it suicide ? The conclusion that it was a case of murder was strengthened by the fact that seven packets of yellow arsenic were recovered from a search of the Rani's belongings. The post mortem disclosed that Kahnchand had died of arsenic. Was it impossible that the Rani possessed and had utilised white arsenic to get rid of a lover, who had become a nuisance ?

The Sessions Judge had found the Rani guilty of murder and held that there was absolutely no doubt that Kahnchand could never have got up to where he did without the express instructions of the Rani that he was to be brought up. He was positive that no man unless he were a professional burglar armed with burgling instruments could possibly have got to where he was seen calling out, unless he had been deliberately introduced to the apartments and taken there, and that the only person who could have allowed him to be thus introduced was the Rani herself. He held that she admitted him to her private apartments, where he was given a draught of milk with a big dose of arsenic in it and that "the evidence in support of these facts is so incontestable that it is extraordinary that they were ever denied."

Each of these findings was carefully and meticulously examined by counsel for the appellant and shown

to be erroneous or inconclusive.

From an examination of the model it was clear that there were atleast three ways, all of them probably well known to Kahnchand from the circumstances of his previous visit to the haveli, by which he could have obtained access to the roof without difficulty. The Bench was persuaded to accept the defence version that Kahn Chand did nothing more than walk up the main staircase of the building leading on to the roof and hence through a door which would ordinarily remain open and a little servants gallery into the bath room adjoining the place from which he was heard calling out. Any one who had lived in the principal guest chamber of the house, as Kahnchand had done in October, would know of this main staircase which was broad and easy, but even if the this theory was rejected there were two other ways of reaching the spot which would present no sort of difficulty for a man bent on getting upstairs during the night.

As regards the arsenic the Sessions Judge had attached importance to the point that yellow arsenic was found by the chemical examiner in five small packets discovered in an almirah in the Rani's room. Kahnchand was undoubtedly poisoned by white arsenic, but the inference drawn by the Sessions Judge that if the Rani was keeping a little store of yellow arsenic, she might very well have some white arsenic handy also which she administered to Kahnchand was shown to be not conclusive on the point.

The Bench came to the unanimous conclusion that the appeal would have to succeed :—

“In a case in which there is no extremely little to go on in the way of direct evidence we are unable to come to any positive finding as to the precise circumstances under which Kahnchand met his death. All that we can say is that the prosecution has, in our opinion, entirely failed to show that the theory of suicide is so completely excluded from consideration that we are bound to fall back upon a theory of murder. For the purposes of the appeal that will be sufficient, but we desire to emphasise our opinion that the theory of suicide is distinctly the more probable of the two. In any case if it should be assumed, contrary to what the prosecution has entirely failed to show that it must have been committed by, or at the direct instigation of the appellant. Considering the coldness and repulsion with which Kahnchand was received at the haveli on his last visit we think it very improbable that his suspicions would not have been aroused if he had been decoyed upstairs by one of the appellant's servants in the manner suggested in the judgment and that he would have looked with still greater suspicion on an attempt to administer to him a draught of milk in the dead of night, knowing what efforts had been made to get him to leave the premises without creating a disturbance.”

Rani Bhagwan Kaur was acquitted and on the 8th

July she was a free woman. Her two maid servants Thakri and Ruri also got their freedom on the same day. As to these two women the Court came to the interesting conclusion :

“The view taken by us in the main case is that Kehnchand’s death was due to suicide rather than murder. Under the circumstances it is impossible to uphold a conviction of any sort against the appellants. By section 309, I.P.C. an attempt to commit suicide is punishable but there is no section of the Code making suicide itself an offence, obviously because in that case there would be no offender who could be brought within the purview of the law. The essence of section 201 is that there should be no effort to cause evidence of the commission of an offence to disappear with the intention of screening the offender from legal punishment. We must take the law as we find it, and must hold that the removal or concealment of the body of a man not proved to be murdered does not amount to an offence under section 201 of the Code.”

CHAPTER VI.

Judge

The requisites of a good Judge are different from the requisites of a good advocate. A good advocate need not have a very extensive knowledge of all branches of the law. It is only necessary that he should understand the law applicable to his case thoroughly; if he is a criminal lawyer he need not worry necessarily, about the ample domains of the civil law; if he is a company lawyer, he need not be an expert in the field of divorce; if his practice is mainly on the appellate side he need not be a good cross-examiner; if his practice is lucratively established on the original side, he can sometimes afford to neglect the appellate side.

A Judge need not possess the virtues of a good advocate. In fact once he is elevated to the Bench he must cease to be an advocate. He must have the

capacity to hear indifferent argument with patience; the law with tolerance; he must leave his own predilections, likes and dislikes, outside his chamber when he comes to court and pick them up only when he goes home; he must be ever ready to decide cases against his friends and in favour of his enemies, that is if he chooses to sit in judgment. It is better that he leaves such cases, and those in which he is apt to betray mortal shortcomings to the judgment of his colleagues.

The primary function of every Judge is to decide the application of existing law to the case before him. The essential requisite in a judge is consequently a catholic view point and a wide knowledge of the main highways of the law. A Judge is not a critic. He is not concerned with the 'hows' and 'whys' of a law. Whether the law is right or wrong, just or unjust, the duty of the Judge is to dispense justice as he finds it. He must leave it to the Legislature to say what the law ought to be. It has been said that it is far better that a bad law should work injustice upon individuals, rather than that a Judge by deliberately refusing to recognize it, should impair the principle of law itself. According to all principles of jurisprudence, the best Judge is he who relies least upon his own opinions.

When Rai Bahadur Shadilal was called to the Bar he was twenty-five. At that age he had behind him a unique scholastic and academic record. In 1913 when elevated to the Bench he was yet in his thirties, an age

when most members of the legal profession are still endeavouring to bridge the gap between fees and the necessities of life and library.

The appointment of Mr. Justice Shadilal to a seat on the Bench of the Chief Court was generally welcomed. Congratulatory messages came from all parts of the country and from England, where he had many friends including the flourishing and prosperous F. E. Smith, who was now making history with Carson.

On the bench of the Chief Court Mr. Shadilal found as colleagues Sir Arthur Reid, Chief Judge and Shahdin, Rattigan, Kensington, Johnston, Agnew, Beadon, Scotsmith, Chevis and Robertson. The majority of the members of the Court were members of the civil service. Mr. Justice Shahdin had established a great reputation in the elaboration of the Customary Law, while Rattigan had brought with him an illustrious name and reputation. Sir Arthur Reid, and Mr. Justice Kensington belonged to the old school, now rapidly disappearing, of benevolent civilias, who believed that the greatness of the British Empire was in a measure due to the strict application of the principles of British jurisprudence, and dispensation of the rule of law to conquered peoples. Agnew, Robertson, Johnston, Scotsmith, and Chevis belonged to a newer school that viewed the administration of justice as the counter part of the executive never to be too remotely removed from the realities of executive problems and administrative needs.

Mr. Justice Shadilal's first experience as a Judge was to decide some of the new commercial cases that were coming before the Chief Court. Since Lala Harkishanlal had left the legal profession in 1899 and turned his attention towards the industrial development of the province, there had been a large impetus in the formation of companies and promotion of industrial ventures. Banks, Insurance Companies, Spinning and Weaving mills, Ginning and Ice factories had started in various parts of the province. The interpretation of commercial law became one of the more important functions of the Chief Court. The failure of some of Indian managed banks in 1913 also led to a crop of appeals and miscellaneous applications to the Chief Court.

Quite early, therefore, in his career on the Bench, we find Shadilal J. while sitting singly and while in Division Bench, having to apply the elaborate and not easy principles of English Company and Mercantile law to the cases coming before the Court. Indian case law was then not so copious of precedent as it is now. Reading these decisions now after nearly thirty years, they still represent accurate and lucid expositions of the principles applicable to each case.

In *Lachhman Singh Vs. Liquidator of the Industrial East Company* the appellant objected to his name being settled on the list of contributories on the ground *firstly* that he had been induced to take the shares by fraud and misrepresentation and *secondly* that

the shares were not to be paid for in cash, but were to be issued to him as fully paid up as part of an advance of two lakhs of rupees which the company had undertaken to make him. In spite of an ingenious argument by Mr. C. Bevan Petman, the court (Scottsmith and Shadilal JJ) held that if before a contract to take shares a winding up be commenced the shareholder cannot be relieved and he will be liable as a contributory. The setting off of a debt due from the company against further calls on shares can only be considered as payment in cash if the debt due be a debt *in praesenti* (1914 L 483.)

The question that arose in Daulatrai Vs. Wazirchand (1914 L 511) was whether proceedings begun in a court of competent jurisdiction under the Companies Act of 1882 were effected by the introduction of the new Act of 1913 so as to vitiate the subsequent proceedings taken by the first named court as *coram non judice*. After considering the law, Shadilal J. held that the act of 1913 did not effect existing proceedings. In Kanshi Ram Vs. Peshwar Bank Ltd. [1915 L 227(1)] it was held that an order of a Court bringing the name of a person on the list of contributories if not appealed against becomes final and operates as resjudicate and the question as to the liability of such person as contributory cannot be reopened.

The onus on the part of a liquidator to establish the facts alleged to constitute misfeasance or fraud on the part of a director was clearly enunciated in Hans Raj

Though Mr. Justice Shadilal had to deal at the early stages with some of the cases that arose out of the winding up the People's Bank of India and other concerns belonging to Lala Harkishan Lal, he also dealt with the several cases connected with the Hindustan Bank belonging to Lala Daulat Rai and as also other banks.

In Tarachand Jairamdas Vs. Official Liquidator People's Bank (46 P.R. 1915) Rattigan and Shadilal JJ held against the Liquidator and laid down that an official Liquidator is not entitled by summary order to a refund of money realised by a creditor of a company before the winding up order was passed but after the Bank had passed a resolution stopping payment of its debts.

Apart from cases involving the interpretation of company and mercantile law, Mr. Justice Shadilal's early judgments show an equally lucid grasp of other branches of the law.

Important and far-reaching decisions in the Customary Law illumined the reports of successive Judges of the Chief Court. Plowden, Chatterji, Rattigan and Shahdin had laid their indelible imprint on the difficult and complicated questions of the customary law and in deciding and limiting the inroads of Hindu Law and conception into the practice and living of Mohammadan tribes and vice versa. To this impressive array of judicial decisions, Mr. Justice Shadilal brought a mind as clear and a learning as extensive as any possessed by his contemporaries. In Santa Singh Vs. Waryamsingh etc.

Vs. Liquidator, Lahore Bank Limited (60 P.R. 1915) Rattigan and Shadilal JJ held that the question whether a Jat agriculturist was entitled to alienate ancestral land for trading purposes involved no question of custom, within the meaning of the Punjab Courts' Act, and accordingly, a second appeal was competent without a certificate. In Mohammad Din Vs. Ahmed Din etc. (1914 L. 522) it was held that the Arains of Lahore City, who owned land in the neighbourhood are governed by Custom.

Shadilal and Le Rossignal JJ, in Ghaus Vs. Fajji etc. (1915 L. 14) decided an important question from a social point of view. The question that called for determination in this case was whether the conversion of a Mohammadan woman to Christianity dissolved her marriage with her husband. The question was answered in the affirmative. It was urged in vain, however, by eminent counsel (K. B. Mian Fazl-i-Hussain) on behalf of the husband that the conversion was not a genuine affair and was utilized merely as a device to get rid of the marriage obligation. "The courts of law" said the learned Judges "have no other means of finding out a persons' intention than that indicated by his acts and conduct and the present case, though the matter may excite suspicion, there is nothing to show that Fajji's change of faith was not genuine."

The case had far reaching consequences and many an unhappy Muslim wife found relief from domestic

unhappiness by seeking the fold of Christianity. The view taken by the Chief Court in this matter was adopted by other High Courts as a correct interpretation of Anglo-Mohammadan law, though there was some debate as to whether the view was in accordance with the *Shariat*. The view taken by Shadilal and Le Rossignal JJ in 1915 was held to be good law twenty years later when the High Court had to consider the same question which was again raised this time before a Bench of which one member was a distinguished Muslim jurist with the same result. The law has since been amended. It is no longer necessary for a Muslim woman to adopt the subterfuge of conversion for the purposes of divorce, which can be obtained by a straightforward suit on several grounds.

Chevis and Shadilal JJ in a case from the Multan District (1915 L. 138) held that in matters of succession, the Aroras of Multan City are governed by Hindu Law and therefore a daughter of an Arora of this city is entitled to succeed to these state of her deceased father. The burden that the parties followed custom in derogation of the Hindu Law, lay heavily on the party alleging custom. The mere fact that there was a family house in Trag Ravi a suburb of the city would not effect the case.

In the first two years of his judgeship, Mr. Justice Shadilal was also called on to decide several cases under the Land Acquisition and Preemption Acts, which resulted in extensive study of the principles and law concern-

ing these acts. Mr. Justice Shadilal later published commentaries on these acts, which are still regarded as standard works upon these branches of the law.

The war and the troubled conditions of the Punjab from 1914-1919 are partially reflected in the reports not as comprehensively however, as might be desired by the historian of the times. The practice in the days of the Chief Court appears to have been that cases of a political and semi political nature should be decided by members of the ruling caste, and the Indian members of the Court were not required to sit in benches involving cases of this character. Both Mr. Justice Shahdin and Mr. Justice Shadilal appear to have been passed over when such cases came before the Chief Court. It is well to remember that it was a Chief Court and not a High Court, and a Court never far from executive influence. During the War, Punjab was governed by Sir Micheal O' Dwyer, then Lieutenant Governor of the Punjab.

Three cases of forfeitures under the Press Act were heard in the first half of 1914. All these cases were heard by Special Benches constituted by the then Chief Judge of the Court, Sir Alfred Kensington and which consisted of the Chief Judge sitting with Johnstone and Rattigan JJ. If the cases throw no lustre on the proceedings of the court of those times, they certainly show that there has not been much change in the executive view point in the last thirty years as to the operation of forfeitures under this Act and the perils run by the members of the

journalistic profession in the exercise of right of public discussion and criticism.

Ghulam Qaadir Khan, Keeper of the *Zamindar* Press applied to set aside two forfeitures one of two thousand rupees and the other of ten thousand rupees (21 & 23 P.R. 1914). In the first case it was averred that an article had appeared in the *Zamindar* newspaper which was printed at the press, criticising the policy of a neighbouring administration, the Government of the United Provinces, in relation to its policy about mosques at Agra and Cawnpur. The Court held that the term "Government established by law in British India" includes any local Government, as also the Government of India. After having declared the security of two thousand rupees deposited by the *Zamindar* Press forfeited in respect of the above article the Punjab Government decided to demand a sum of Rs. 10,000 as fresh security, which was deposited. This too was soon forfeited by reason of three articles in the paper by the Editor, Maulana Zafar Ali Khan. The first article said it was a mistake to trust Government about religious matters, the second complained about the lack of courtesy of the Secretary State in declining to receive a deputation of the All-India Muslim League, thus showing, in the opinion of the writer, disrespect to 17 millions of Mussalmans. The third article referred to certain social conditions in England and the prevalence of a certain disease. The writer in court, through Mian Fazl-i-Hussain, expressed his deep devotion and loyalty to the

Government. This expression of loyalty did not carry him far, nor was the court impressed about the claim of the Muslim League to represent India's seventy million Mussalmans. "We have no reason" said the Chief Judge "for supposing that the League in question represents anybody beyond its own members" a finding that Mr. Jinnah would to-day stoutly deny.

The third case which came before the same bench related to the forfeiture of the much more moderate sum of Rs. 500 of the Rafa-i-am Printing Press. This application had a short life being dismissed on the ground of limitation.

The mood and temper of the times is well illustrated from a perusal of the reports of the "conspiracy" cases, which were so prominent a feature of the administration of Sir Michael O'Dwyer, cases which at the time cast a gloom over the entire province.

The Lahore conspiracy case arising out of the explosion in the Lawrence Gardens of a Bomb on the evening of the 17th May 1913, in the course of which one person was accidentally killed, resulted in the trial of several persons for murder and conspiracy to commit murder. The brains of the alleged conspiracy was said to be Hardyal, then in California, and Rash Behari Ghose, who made good his escape. The police were not able to effect a solution of the crime until many months later and the defence argued with same force

that the whole case was a concoction by the Police. The Court, however, did not agree with this contention, and three persons were sentenced to death (Abid Behari, Amirchand and Balmokand) while four were sentenced to transportation for life. The case coming up before Johnson and Rattigan, JJ. was argued for several weeks. Mr. Ross Alston and Mr. A. B. Broadway represented the Crown and Mr. Beechey, Bakshi Tek Chand, Mr. Nauak Chand Sen, and Lala Raghunath Sahai appeared for the accused. The court came to one side conclusions :

Abid Behari "He is a man deserving of no mercy or consideration".

Amir Chand "The result is damning. The man has fully earned his reward."

Batraj "I would sentence him to the maximum."

Balmokand "Nothing more worth noting for Balmokand, I would simply reject his defence. No mercy should be shown to him."

Hanuman Sahai "I find him guilty and dismiss his appeal and am content to sentence him to the maximum sentence under section 115."

Basant Fumar "In short he is guilty and should be hanged."

Charandas "Is guilty and should be sentenced to imprisonment for life."

The condemned persons got no sympathy or mercy from the Lieutenant-Governor and paid the penalties of the law.

The case aroused some disgust, even in England, and the "New Statesman" published a trenchant criticism of the trial and the sentences.

Happily—it can be said happily—Mr. Justice Shahdin and Mr. Justice Shadilal were spared the unpleasant task of hearing cases such as these, cases which reflect no credit on the otherwise excellent record of the Punjab Chief Court.

Not long after the hearing of the conspiracy case, referred to above, Sir Arthur Kensington laid down his office at Chief Judge of the Court and was succeeded by Sir Donald Johnstone. In the same year Mr. Le Rossignal was nominated as an officiating Judge and Mr. Leslie Jones took his seat for the first time as an Additional Judge.

Sir Donald Johnstone held office as Chief Judge from 1915 to 1917 and on his retirement Mr. Justice Shahdin was authorised to officiate as Chief Judge, a unique honour in those days.

Sir Henry Rattigan was, thereafter, appointed as the permanent head of the Chief Court. This was in 1917. Two new figures had taken their places on the seats of the Chief Court—Mr. A. B. Broadway, later Sir Alan

Broadway who brought with him a close friendship with the Lieutenant-Governor and Mr. A. E. Martineau. Mr. Martineau had for many years been Sessions Judge in Rawalpindi and other places and had consistently refused to allow executive considerations to intrude upon his judicial duties. He was passed over more than once, but eventually acquired a sheer and outstanding seniority that could not be ignored. His career in the Chief Court and later in the High Court was one which long be remembered as an outstanding example of rectitude in British judicial standards.

In 1919, the services of Mr. Justice Broadway and Mr. Justice Leslie Jones were lent by the Chief Court for the Martial Law Tribunals. Mr. Leslie Jones presided over the Lahore Tribunal, which sentenced Lala Harkishan Lal, Lala Dunichand and Pt. Rambhaji Dutt to transportation for life. The Amritsar tribunal dealt with the cases of Bugga, Mahashe Rattan Chand, Dr. Satyapal and Dr. Kitchlew. The memory of the proceedings of the Tribunal are still fresh in the public mind.

In 1921, Mr. Justice Leslie Jones resigned and went home in protest against the new policy which was exemplified in the appointment of L. Harkishan Lal as Minister in the new Government. Mr. Montagu had successfully piloted the new Government of India Act with its historic preamble about the ultimate goal of India in the British Commonwealth. A new era was heralded. The war had changed the outlook of men and nations.

England gasped with horror of the tales of Amritsar and Gujranwala. O'Dwyer and Dyer no longer represented the average Englishman's ideals of how India was to be governed.

In these moments, great moments in the history of India, the British Cabinet took the wise decision that the time had come to establish a High Court in the Punjab. The Government of India lent all aid to this proposal. Happily among its members was Sir Mohammad Shafi, who after one of the most extraordinary and dazzling careers in the profession, had gone straight from the membership of the bar to the membership of the Viceroy's Cabinet. To follow him soon to the sphere of politics was Mian Fazl-i-Hussain, at one time his junior then his rival for the headship of the legal profession.

The removal of Shafi and Fazl-i-Hussain to the administrative sphere, the death of Mr. Justice Shahdin in 1917 at a premature age, marked the advent of the destiny of two men, much loved and respected by their countrymen. Mr. Justice Shadilal's career on the Bench though comparatively short had been marked with conspicuous tact, ability and commonsense. Both the public and his colleagues recognised in him the exemplary custodian of the highest traditions of justice. The litigation arising out of the martial law cases had earmarked Bakshi Tek Chand for a conspicuous career at the Bar. He easily and naturally stepped into the ample and expansive void left by Shafi and Fazl-i-Hussain.

CHAPTER VII

Chief Justice

We have referred in an earlier Chapter to the establishment in 1866 of the Chief Court in the Punjab. We have also referred to the Chief Courts Act of 1865 under which the Governor General constituted the Court first of two Judges, a Civilian, (A. A. Roberts) and a Barrister (E. Boulnois) in substitution for the Judicial Commissioner's Court. It had become necessary to expand and improve the judicial machinery consequent upon an increase in the volume of litigation. The Chief Court since February 19, 1866 was the final appellate authority in civil and criminal courts in cases where European British subjects were charged with serious offences, and of an extraordinary original civil jurisdiction in particular matters. The Chief Court was also a court of revision, in respect of both civil and criminal cases

But before long it was realised that a Court consisting of two Judges could not cope with the increasing number of institutions and in 1869, a third Judge (a civilian) had been added to the Court. For the next twelve years the constitution of the Chief Court remained thus—two permanent and one additional judges. In 1881, the steadily increasing amount of business and arrears before the court made it necessary that some further assistance should be given to the then judges. A temporary appointment of a fourth Judge was sanctioned in October of that year. But notwithstanding this addition to the Court, it was found barely a few months later (July 1882) that the number of civil appeals pending was considerably greater than on the corresponding date of the previous year. So in the following November, two more Additional Judges were appointed. From time to time it was found necessary to retain the services of these additional officers, and in the latter half of the year 1886, the appointment of four permanent Judges in all was sanctioned by the Secretary of State for India.

The abolition in 1882 of the Bench system in the Divisional Courts, added to the number of appeals preferred to the Chief Court, and so congested became the state of work in it, that for some time it was necessary to employ six Judges in all.

The number of Judges was again reduced to four towards the close of the year 1885. But the result of

this was that Division Bench work fell into heavy arrears, though Chamber work was largely kept up-to-date.

The accumulation of arrears was traced to the Punjab Courts Act, 1884 which had afforded a right of appeal in comparatively petty cases. It was now found necessary to amend the act and in 1888 the amending Act came in force so as to decrease the appellate work of the Court. The Act raised the limit below which a further appeal was not allowed as of right and invested the decrees of the lower appellate courts with greater finality. It also empowered Judges of the Chief Court, sitting singly to reverse, modify or confirm the orders of Subordinate Courts. As a result of this Act, appeals instituted from decrees fell, but the relief thus afforded to the Court was largely nullified by the ingenuity of the legal profession and a marked rise in the number of petitions for revision was noted. Towards the close of 1888, the Hon'ble Judges of the Chief Court had to promulgate rules under which security was necessary for the performance of a decree, before an application for revision was admitted to a *pucca* hearing. This measure considerably checked the evil, and the Judges of the Court were heartened to notice a reduction in the pending file.

Although, it was then found possible to reduce the number of Judges to five, arrears became again marked some years later (1895-96). So at the end of

that period the strength of the court had again to be raised to six—four permanent and two temporary. But still there was little hope of the arrears being cleared off under the then existing appellate system. The applications for revision were still numerous. By far the greater number of these petitions was rejected *in limine*, by Judges sitting singly as there was no tendency to admit them freely. But even when summarily rejected, these petitions took up a very appreciable portion of the court's time as even groundless petitions must be found to be groundless. A further alteration in the law was brought into force from November 1897 when the limit in value of civil appeals, to be heard by a single Judge was raised. This had the effect of reducing slightly the number of civil appeals admitted to a Bench of two Judges.

In 1899, the law of appeals relating to was further amended, but the hope that the Court would be able to cope with all the court work that poured in proved fallacious. In 1904, it became necessary to employ four temporary Judges to clear off the arrears. A fifth Judge was at the same time permanently added to the Court. But even these measures proved inadequate. One temporary additional Judge was consequently employed and a second was frequently found necessary. The law relating appeals was again amended in 1912, in the hope of reducing the number of appeals, but the congestion of civil appellate work was so great that no improvement

could be expected unless the number of Judges was definitely and substantially increased. It then took about three years for a first or second appeal to come up for hearing before a Division Bench.

Thus for fifteen years since 1904, the Chief Court struggled with the assistance of temporary Judges against the ever rising tide of institutions, when on its conversion to a High Court in 1919, the permanent strength was raised to seven. The manner in which the Chief Court battled with its lists, without in the slightest giving the impression that justice was of anything but of primary importance, bears testimony to the untiring industry, ability and sense of duty of those who had the honour from time to time to be its members.

The Chief Court came to an end and was succeeded by the High Court of Judicature at Lahore, constituted the Royal Letters Patent, on April 1, 1919.

The elevation of the Chief Court to the status of a full pledged High Court had been mooted as long ago as 1886 by Sir Meredyth Plowden, then Senior Judge of the Court. But the memorandum submitted by this eminent Judge and other memorandum submitted later proved of no avail.

The remarkable growth of litigation in the province and the marked prosperity of its pre-War budgets again forced the issue to the forefront. After considerable delay and correspondence, the proposal was approved

by the Secretary of State for India in 1916, but was postponed till the war was over. On March 21, 1919, however, under His Majesty's command the Letters Patent of the new Court were sealed.

The High Court was constituted with Sir Henry Rattigan as first Chief Justice and six puisne Judges, Mr. Justices Chevis, Henry Scott Smith, Shadi Lal, Le Rossignal, Leslie Jones and Allan Broadway. It was open to the Governor-General under the Government of India Act, 1915 to appoint such further additional or temporary judges as may be found necessary.

The constitutional difference between the Chief Court and the High Court was that whereas the former was constituted by the Government of India under the Chief Courts Act, 1865, the High Court had its charter direct from His Majesty. The Judges of Chief Court had been appointed by the Governor-General and were liable to dismissal by him. They were, accordingly, under the control of the Executive. The Judges of the High Court were not, theoretically, under this control, being appointed by His Majesty and holding office at his pleasure. The High Court was constituted as a Court of Record, whereas its predecessor could not claim this dignity. The Letters Patent set out the ordinary and extraordinary civil and criminal jurisdiction of the High Court and provided a further appeal within the court itself from judgments of Single Judges in the exercise of civil jurisdiction.

The opening ceremony of the High Court of Judicature of the Punjab and Delhi Province at Lahore on April 1, 1919 was a solemn and imposing ceremony at which the Lieutenant-Governor presided. A large *shamiana* was erected in the Court grounds, in which were accommodated in sections, high Government Officials, members of council, barristers and advocates and a large number of other guests; a guard of honour of the 26th Royal Sussex Regiment and the third Punjab Rifles was drawn up in front of the tent. His Honour, Sir Michael O'Dwyer who left Government House at 8-15 a.m. accompanied by Lady O'Dwyer and his personal staff, with an escort of the 5th Punjab Light Horse under Lt. Cornforth, proceeded *via* Kashmir and Cooper Roads and the Mall. On his alighting in front of the Court, the guard of honour presented arms and the Police band played "Rule Britannia" while a salute of 15 guns was fired. His Honour was then received by the Chief Justice, the Judges of the High Court and the following officers of Government, namely, the Hon'ble Mr. J. P. Thompson, Chief Secretary, the Hon'ble Mr. T. P. Ellis, Legal Remembrancer, Mr. A. J. W Kitchen Commissioner, and Mr. H. Fyson, Deputy Commissioner of Lahore. After His Honour had inspected the guard of honour, a procession was formed which proceeded in the following order to the tent :

Mr. J. A. Ferguson, I. C. S., the Hon'ble Mr. Justice Abdul Raof, the Hon'ble Mr. Justice Broadway,

the Hon'ble Mr. Justice Leslie Jones, the Hon'ble Mr. Justice Le Roosignal, the Hon'ble Mr. Justice Shadi Lal, the Hon'ble Mr. Justice Scott Smith, the Hon'ble Mr Justice Chevis, the Hon'ble Sir Henry Rattigan Kt., Mr. H. Fyson, I. C. S., Deputy Commissioner, Mr. A. J. W. Kitchen, C. I. E., Commissioner, Lahore Division, the Hon'ble Mr. T. P. Ellis, Legal Remembrancer, the Hon'ble Mr. J. P. Thompson, Chief Secretary, Mr. E. V. Salusbury Aide-de-Camp. Lt.-Col. E. C. Baylay C.I.E., Private Secretary, His Honour the Lt.-Governor.

The Governor having taken his seat on the dais, the Chief Secretary to Government came forward and placed in His Honour's hands the Letters Patent of the High Court and before presenting these to the Chief Justice he delivered the following speech:—

“Sir Henry Rattigan, Judges of the High Court, ladies and gentlemen the signing of the Letters Patent, a copy of which I am commissioned to deliver to the Chief Justice of the High Court of Judicature at Lahore, marks the climax of a long process of judicial development. Now that the summit is reached, it is of interest to turn round and trace the road along which we have travelled.”

Sir Michael O'Dwer then gave a brief and interesting account of the development of the High Court and continued:—

“We have now at least secured a permanent Court of

seven; but education is spreading, prosperity is increasing now, and complicated interests are arising and I doubt if finality has yet been reached. The infant court's first cry is a cry for help and the seven will have grown to eight by the usual process of temporary addition before the Judges take their seats on the Bench.

“We have not won our High Court without struggle. The first whisper of a suggestion that a High Court was wanted in the Province that I have been able to find was in a memorandum submitted to Government in 1888 when Sir Meredyth Plowden was Senior Judge. It was put forward with great diffidence, rather as a forecast, than as a proposal. The Punjab Government in sending it to the Government of India did not venture to say more than that they would give their opinion on the points raised in the memorandum of India saw no advantage in entering on a consideration of the matters in question.

“In the following year, another representation was made again without success and then for a decade the idea slumbered. In the spring of 1900 it came up again in the form of a definite proposal by the Judges. It received at best lukewarm support from the Punjab Government of the day in those days our finances were not so flourishing as they are now and there were other and more urgent reforms therefore

not surprising that the proposal was disapproved by higher authorities. The rapid development of the province in the present century again forced the question of the forefront and when the case next went up to the Government of India, in 1913, it was backed up by my predecessor Sir Louis Dane with all the backing that Government support, debates in the council and articles in the press could give it and after much intermediate correspondence, a little over two years ago, we obtained the promise from the Secretary of State that the status of the Chief Court would be raised as soon as financial considerations permitted, after the end of the War. That promise has now been redeemed before the time originally fixed and we are to-day in possession of a High Court, though the final treaty of peace has not yet been signed. To me it is a great satisfaction that this acknowledgement of the higher status of the province should have come in my time of office, and a great privilege that in the unavoidable absence of His Excellency the Viceroy, it has fallen to me to preside at to-day's ceremony.

“But, ladies and gentlemen, in this hour when we are all congratulating ourselves on aspiration attained and inequalities removed, let us not forget the famous men whose work in the past made the reputation of the Court what it is. If they had

not laid the foundations so truly and so well, we should not have seen the edifice grown to-day. Sir Meredyth Plowden, Sir Charles Roe and Sir William Rattigan, the great expounders of the Punjab custom, Sir Denis Fitzpatrick one of the acutest lawyers that the Civil service has produced, Mr. Henry Rivaz, Sir Arthur Reid, whose period of office was the longest in the history of the Court, Sir Protul Chatterji, the first permanent Indian Judge, Mr. Snah Din whose untimely death, we all regret, were all men whose influence on the interpretation of the codes and of the legal customs will be felt for many years to come. Those of them who have lived to see this day will share our satisfaction. To them as to the others we offer our respectable tribute of gratitude and demonstration.

"It is a good omen for the future of the Court that the first Chief Justice should be Sir Henry Rattigan. He bears a name which stands high in the legal annals of the Punjab and the Province is fortunate in having as the head of its judiciary at the time of this momentuous change, a lawyer who knows its people and has devoted his life to the study of their customs."

The Chief Justice, Sir Henry Rattigan then replied on behalf of himself and his colleagues.

"We are inheritors of the great traditions of the Chief Court which during the 53 years of its existence as the Supreme Court of this province, has stood forth as the embodiment of fearless independence and of impartial justice. We are successors of Judges, who were deeply learned in the law and distinguished even among the foremost jurists of their time, and of whom all were imbued with the true judicial spirit, genuine sympathy with the people and an ever present determination to do justice without fear or favour, who were swift to punish where punishment was necessary but were ever mindful that the quality of mercy is an attribute the absence of which renders the most erudite Judge ill qualified for his high office.

"Yesterday we were ourselves judges of the Chief Court and the last of that long line of judicial officers, which began with Roberts Boulnois in 1866. To-day we stand before your honour as the first Judges of the New High Court of Judicature. We are thus a connecting link between the past, the present and the future, and it shall be our earnest endeavour to discharge the duties of our high office with due regard to the traditions of the past, to the welfare and good government of the people, to the dignity appertaining to the High Court and the maintenance of law and order confirmatively with the dictates of equality, justice and good

conscience. In this connection, it is a matter of congratulation to us that we have in the present members of the Punjab Bar strong and fearless allies, upon whose co-operation and assistance we confidently rely. The Punjab Bar has for generations past been remarkable for the very large number of distinguished advocates and lawyers belonging to it and to-day there are in its ranks some of the most famous and able forensic orators and lawyers in India, while taken as a whole, the members of our Bar can challenge comparison both as regards ability and knowledge of law with members of any other Bar in this country. To them, we who administer the law, look with every confidence for that ready and loyal help in the future that they have extended to us in the past, and, with Bench and Bar working with a unity of purpose and in hearty co-operation, we venture to hope that the High Court will fulfil the high expectations entertained of it by the public. And it must be the duty and privilege of the Bench and Bar to bring home to the public the truth of that wise aphorism—'where justice reigns, it is freedom to obey.' "

The great and noble ship launched amidst these impressive ceremonies was, however, unfortunate to lose her captain and commander soon after.

Lahore was depressed during the Christmas vacation of 1919 with the illness of Sir Henry Rattigan, Chief Justice. On January 3, 1920, the province learnt with deep sorrow and regret that he had passed away.

In the words of the *Civil & Military Gazette*:

"In the last year or two, the former Chief Court and present High Court at Lahore, has had all too many occasions on which to express its sorrow at the death of some distinguished past or present Judge and at such functions Sir Henry Rattigan always showed a rare felicity in paying tribute to the great dead. The High Court has now to mourn the greatest loss of all in the death of its first Chief Justice, cut off in the full vigour of his powers, and its loss is shared by the whole province.

"Sir Henry Adolphus Ryden Rattigan was the eldest son of the late Sir William Rattigan, the leader of the Punjab Bar for many years, afterwards a Judge of the Chief Court, and in the closing years of his life, Member of Parliament for North East Lanarkshire. Sir William left a great and abiding reputation in the Punjab as a distinguished jurist and a profound student of customary law, and his son, when he in turn came out to India to take his part in the legal life of the province, was the inheritor of a great name and a great tradition, and it was not long before he proved

that he would worthily uphold them. He was born on October 11, 1864 and received his education at Harrow and Balliol College, Oxford, where he graduated in 1888. In the same year he was called to the Bar of Lincoln's Inn and in the following year he came out to India and was enrolled as an Advocate of the Chief Court Bar on February 1st, 1889. In his own speech, in acknowledging the compliments of the Bar and his colleagues on the Bench on his appointment to the Chief Judgeship in 1917, Sir Henry Rattigan referred in terms of humorous self-depreciation to the exaggerated opinion he held of his own legal attainment at that time and to his sanguine expectation of becoming leader of the Bar at an early date. It is true that the Punjab Bar was then at its zenith and that there were giants in those days like his own father, Mr. K. P. Roy, Sir Protul Chandra Chatterji, and Rai Bahadur Lal Chand. But Sir Henry brought to the practice of his profession natural gifts and a wealth of learning, which were bound to make their mark even in this great company. His industry and conscientiousness combined with his high legal attainments, quickly took him to a foremost place in the profession, and his success as a barrister was enhanced by that charm of manner and the unfailing courtesy, which afterwards distinguished him on the Bench.

Since April 1, 1919, though only a few months had elapsed, a great deal had happened in India in general and in the Punjab in particular. April had been marked by the introduction of martial law and the iniquities and barbarity of ill-guided administrators like Sir Michael O'Dwyer, and ill-starred soldiers like General Dyer. India was seething with resentment and indignation. The English public were surprised and outraged with events in India. The 'Bill to make further provision for the Government of India' sponsored by Edwin Montagu had passed through all stages in Parliament and received the Royal Assent. His Majesty's Government was anxious to make amends as far as possible for the injury done in India and to foster a policy of appeasement.

Sir Fazl-i-Hussain and Lala Harkishen Lal, critic and rebel respectively, were appointed as first ministers under the reformed constitution. In times like these and in the mood of the period, His Majesty's advisors took the bold and creditable step of selecting Mr. Justice Shadilal to succeed Sir Henry Rattigan as permanent Chief Justice of the High Court of Judicature at Lahore. In making this appointment, His Majesty's Government showed a deference to Indian opinion, which was unanimous on the point. All quarters and all communities welcomed the selection. Mr. Shadilal had by this time established a reputation as a Judge of outstanding

ability, much as he had established outstanding records in his younger days at the University and at the Bar.

On May 1, 1920, Mr. Justice Shadi Lal was sworn in as the first Indian to attain the rank of a permanent Chief Justice of a High Court of Judicature. The occasion and the event were historic.

The accession of the new Chief Justice to the dignity of his high office was celebrated with universal satisfaction and ceremony. A huge gathering assembled in the main Court room of the High Court, the scene of so many historic functions and trials, to witness the congratulations from Bench and Bar to the new Chief Justice.

Mr. Philip Morton, Barrister-at-Law speaking as senior member of the Bar in Punjab, referred to the former relationship between himself and the Chief Justice of tutor and pupil, when the speaker was head of the Law School of the Punjab University, and said he felt a sincere and profound satisfaction both personally and professionally at Mr. Justice Shadi Lal's selection for the highest position in the judicial line. That acknowledged merit had been recognised was always, but more especially on this occasion, a matter for wide and general congratulation. Special congratulations should also be addressed, among others to the litigant public whose interest in the matter was too obvious for expression; to the new High Court itself

which would have the benefit of the help and direction of a sound and independent lawyer of approved experience and undoubted ability and to the Bar of which he had been so long a distinguished and valued member, and who confidently looked forward to his certain interest and help in the maintenance and increase of its dignity, reputation and prosperity.

Adding a personal note the speaker congratulated himself on the fact that an old pupil of his had reached through merit, his present exalted position.

Mr. Fazl-i-Hussain then spoke as President of the High Court Bar Association, and offered the Chief Justice hearty congratulations. He referred briefly to Mr. Justice Shadi Lal's career in the Punjab University, at Oxford and at the Inns of Court, and to his success as a lawyer and a Judge, paying a warm tribute to his sound legal and general knowledge and to his many excellent personal qualities and educational activities. The speaker also made a touching reference to the death of the late Sir Henry Rattigan, who, as all knew, valued the co-operation of the Bar. His loss was great and irreparable but they were sure that, now that his mantel had fallen on so worthy a successor, the programme which he had in view to improve the judicial administration and the Bar would be carried out. Holding fast to the best traditions of the English Bar, Sir Henry Rattigan's intention was to still further exalt and dignify the High Court of the Punjab and the Bar ; and they felt that

the new Chief Justice would continue to follow these high ideals from where the late Sir Henry had so suddenly and sadly left off. In conclusion Mr. Fazl-i-Hussain assured the Chief Justice of the hearty co-operation of the Bar.

The Hon'ble Mr. Justice Scott Smith, addressing the Chief Justice expressed, in the first place, the regret of the Hon'ble Mr. Justice Chevis, who had officiated as Chief Justice since Sir Henry Rattigan's death, as not being able to be present owing to illness. He next congratulated the Hon'ble Mr. Justice Shadi Lal on his appointment on behalf of the Bench. Mr. Morton and Mr. Fazl-i-Hussain had paid an eloquent tribute to the new Chief Justice both as a Judge and member of the Bar and with that tribute the High Court Bench desired to associate itself. Mr. Justice Shadi Lal had been a Judge of the Punjab Chief Court and of the High Court for six years and his colleagues who had seen his work and knew his character knew him to be eminently fitted to take his great office as Chief Justice. They were all confident that he would maintain the reputation of the High Court and they would assist him with loyal co-operation and support in his onerous duties. He wished Mr. Justice Shadi Lal the best of luck and many happy years as head of the Punjab High Court.

Reply to these congratulations, the Hon'ble Chief Justice replied in the following terms :—

"Mr. Justice Scott Smith, my colleagues on the Bench, Mr. Morton, Mr. Fazl-i-Hussain and members of the Bar, I am deeply touched by the warm and kind welcome you have extended to me on this occasion when I am entering upon the discharge of the onerous and responsible duties of my new office. Please allow me to tender you my most cordial thanks for the very generous terms in which you have referred to me. I wish I could lay claim to all the good qualities which Mr. Justice Scott Smith, Mr. Morton and Mr. Fazl-i-Hussain have so kindly attributed to me. This much, however, I can say that I am no stranger to you or to the judicial work, and your words encourage me to believe that I enjoy the confidence of the members of the Bar and of the public whom they so worthily represent. I shall consider it my duty to assist in that fearless and impartial administration of justice which is essential to the well being of the community, and in enforcing those high principles which have always distinguished the British system of judicial administration.

"While conscious of the high honour which His Majesty the King Emperor has been graciously pleased to confer upon me, I am not unmindful of the fact that I am undertaking a very heavy and responsible task, and that I shall be judged by the high standard of learning and devotion to duty set

by my distinguished and lamented predecessor, the late Sir Henry Rattigan. This Court, though successor to the Chief Court of the Punjab is essentially different from that Court and, viewed in that light, it is still in its infancy. There are several matters having a bearing upon the qualities and strength of the component parts thereof which require a careful consideration with a view to improvement. But these matters cannot be settled in a hurry, and it is necessary to adopt the rule of conduct embodied in the short but expressive phrase *festina lente*.

“I have no desire to weary you with a lengthy address, but I must refer, however, briefly to one or two problems touching the disposal of the judicial business in this Court which call for an early solution. You must have noticed and indeed Mr. Fazl-i-Hussain has already referred to the fact that there is a considerable accumulation of civil appeals in this Court, and though the Judges by working at a high pressure can manage to keep space with the current business, they are unable to make any impression upon the arrears. It must be remembered that the number of convicts under sentence of death, whose cases come up before this Court is ordinarily greater than the number dealt with by four other High Courts put together,

namely, Calcutta, Bombay, Madras and Patna High Courts.

"The inconvenience caused to the litigant public by this congestion of judicial business is a matter of great regret to the Judges, and there can be no doubt that justice delayed is, in many cases justice defeated.

"But there is yet another matter which leads to some injustice to litigants and which can be remedied without any extenal help I refer to the rules which regulate the distribution of civil business and the preparation of cause lists. It is certainly objectionable that while a large number of the appeals instituted in 1916 have been disposed of, there are some cases of 1914 and 1915 which are still awaiting decision. This anomalous state of affairs can be remedied by adopting with necessary modifications the system known as that of continuous cause list, which has already been explained to a representative Committee of the Bar. I invite the co-operation of the Members of the Bar in this important matter, and in order to avoid if possible the clashing of the cases set down before different Benches in which the same counsels are arranged.

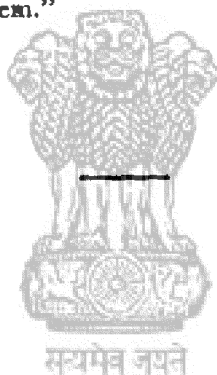
"I do not know if any of our fastidious critics would put down any acknowledgment on my part of

the indebtedness of the Bench to the Bar to the partiality which men feel for their first and in my case a still abiding, love. Such acknowledgments have however, been freely and ungrudgingly made in the past by Judges, to whom no sort of bias can be attributed, and I think you can fairly claim that the reputation, which you so deservedly enjoy, rests on a firm and sure basis. You remember, gentlemen, the caustic observations of Shelden about the equity of the Court of Chancery varying with the Chancellor's foot, another a short foot and a third an indifferent foot, and about the same being the case with the Chancellor's conscience. Lord Eldon, as we know, resented these observations, but Judges are not altogether immune from the human frailty to liability to error, and if this liabilities is not perceptible as it would otherwise be it is in no small degree due to the assistance you render by supplying the Judges with a systematic sequence of precedents, which tends to keep, as it were, the Chancellor's foot in just and uniform proportions.

'Now before I conclude I wish to say how deeply grateful I am to my learned Colleagues. To them shall constantly look for co-operation and support and their friendly and cordial relations with me in the past encourage me to hop and Mr. Justice Scott Smith's assurance, leaves no doubt, that I

shall receive from them a hearty response and that we will all work together in administering even handed justice to our fellow subjects without fear or favour and in promoting the welfare of the Punjab and the Punjabis.

In conclusion I must thank you again for your cordial congratulations and for the kindness which had prompted them."



CHAPTER IX

Chief Justice II

One day nearly twenty years ago, I had a discussion which I have carried in my mind all these years; its reality and truth grows rather than diminishes in importance as time passes.

The High Court Bar Room was then as it always is a delightfully democratic centre. Juniors, seniors, prospective Judges and ex-Mi-Lords sat round common tables of gossip. I found some members making frantic efforts to study in the babel, but I do not think anybody has a chance of winning an appeal, if he leaves his preparation to the Bar Room. To the Bar Room resorts the surging tide of legal learning, the young hopefuls, the more mature hopeless ; the elevated,

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the to be elevated, and the once elevated. Round you, you see the many better versed in contract bridge that in contract, better in law than at tennis. You see many faces familiar to every garden party ; some you meet again at the Cosmopolitan Club. You see those who combine business with law, those who look after local educational institutions and those who teach law at the Law College in the mornings and learn it from the Judges in the afternoon. The Bar Room has a strange fascination and charm all its own. Sir Mohammad Shafi paid a visit to the Bar Library regularly twice a year, while he was a member of the Government of India and so did Sir Fazl-i-Hussain, until he became too great to attend. In other High Courts Judges do, I understand, now and again visit the Bar Rooms and gossip on the topics of the day, just perhaps to retain the "common touch." In the Punjab, I think it would be unusual to find a Judge in the lunch room.

Any person visiting the Bar Room, as I did, on the day in question would have found many interesting persons. Each year adds new faces and new talents and subtracts the total in like manner. At one end of the room sat Bakhshi Tek Chand, beside R. B. Badri Dass and the ever-youthful Balwantrai. One missed Rai Bahadur Jailal but every one was unanimous he was making an ideal Judge. There

was Madu Sudan Bhagat, a tall gaunt figure with ready wit and happy smile and the inimitable Chona who combined authoritative law reporting with a European hat and Ranken-cut trousers. In a corner sat Lala Hargopal not much older but perhaps somewhat grayer with the added total of legal study. There was Pandit Shiv Narain presiding over a mixed society of vegetarians and Buddhists; and Sir Mohammad Iqbal philosophically resigned to a poetic fate; there was Pandit Nanak Chand eloquent on the Nehru Report and Gobind Ram Khanna looking very victorious. There were of course many others, some busy with the Hindu Sabha, others in speculation regarding future vacancies on the Bench, but very few busy with the law reports. I found Diwan Ram Lal who, by then, had added to a distinctive pleading, a very distinctive conveyance, all no doubt leading up to a distinctive future.

I sat with him for a time and had a discussion which, with the lapse of years, has not faded in the least, and, with which I should say we both still agree, although since then we have not agreed on other matters.

The point then was—who is the greatest Punjabee? After some considerable analysis we came to a unanimous conclusion: From the point of view of subtle brilliance—Sir Fazl-i-Hussain; in originality and organisation—Lala Harkishen Lal; in political in-

stinct Lala Lajpat Rai ; for initiative and monetary success—Sir Ganga Ram ; from all points of view—Sir Shadi Lal. Sir Shadi Lal had earned the distinction of being the only Indian permanent Chief Justice. The office was no sinecure nor a bed of roses, in common parlance. The Chief Justice managed to keep the scales even, not only while on the Bench but in more difficult and complicated situations that arose in administrative matters. India was proud not only that one of her sons had attained to this high office, but it was a matter of greater satisfaction that the office was being held with such success, a success that demanded legal acumen of a very high order, and, what was more important, infinite tact.

Sir Shadi Lal took office as Chief Justice at a time when great events were in the making history of India. A difficult period forthsooth when for the first time the capacity of this country to work democratic institutions on the western style was being tested.

Analysing the events of a period constituting the record of Punjab political progress, certain facts of extreme importance emerge. The Reforms came on the morrow of the terrible finale of the O'Dwyer administration. The spirit and temper of the people was hostile to any form of co-operation with a Government that Gandhi declared as 'satanic'. Consider-

ing recent events in Punjab, the epithet was not far wrong. Many people, including eminent members of the Bar, openly preached defiance to law and the boycott of law courts and educational institutions. Punjab was particularly sore, for not only had the events of the previous few months come as a rude shock to her traditional loyalty, but the verdict of the House of Lords and the "Morning Post" Fund to Dyer had added insult to injury. Punjab was fortunate in a conciliatory Governor, but the situation needed more careful handling than mere amiability. Though Sir Edward Maclagan did a courageous thing in appointing Mian Fazl-i-Hussain and Lala Harkishen Lal, both of whom had been intimately associated with the Congress movement in Punjab, he failed, for some reason or other, to guide the destinies of the province entirely in channels of wisdom.

It is difficult to say at this margin of time whether Sir Edward Maclagan's failure to give a proper lead was due to weakness or whether he was himself a party to the new policy of communalism. As his Finance Member, Sir John Maynard told the Muddiman Committee, some years later, Government soon came into the hands of a bloc led by Mian Fazl-i-Hussain; and not until the end of Sir Edward's term was any effort made towards securing the independence of the official bloc in the council. The authors of the Montagu Chelmsford Scheme intended that the official bloc should, by

controlling the balance of power, retain the final voice on all major questions of policy. In Punjab, the Official Bloc entirely capitulated and Sir Fazl-i-Hussain obtained the final voice not only in his own department, but in the departments of his colleagues and in shaping almost, the entire policy of the Government of his day. The Province and the country was thereby stamped into a course that proved somewhat beneficial to certain persons but generally disastrous to the best interests of nation building.

Dyarchy died a natural death. One Minister was aggressive and gradually made himself and his party indispensable to the reactionary official group, it is doubtful whether any one in the Government worked with any sense of collective responsibility. Every individual in the Government, the two Ministers, the two Executive Councillors and Governor and the Chief Secretary and went their own several ways. One member of the Government Lala Harkishen Lal, openly, at a public meeting, denounced the declared policy of the other member of the transferred half of the Government. The Province went from bad to worse, the Government was composed of strong men, but no one strong enough to look after the others. The evil of communalism, born of separate electorate and winked at by certain interests hostile to Indian political aspirations grew to abnormal proportions. It was everybody's duty to deplore it, but nobody's to set it right. The

official caste had its views and could not be ignored, and between many cooks, a pretty mess followed. It was hardly dyarchy : it was certainly anarchy.

Dyarchy was (as later admitted) from the outset an utter impossibility. As Sir John Magnaud said to the Muddiman Committee, "if we had worked Dyarchy, the whole machinery of Government would have broken down." But because the Punjab Government did not, or could not work dyarchy, it did not follow that it was a unitary Government.

The Government later, however, became unitary from sheer force of circumstances. Towards the end of 1923, Lala Harkishan Lal tired of the interference of the Government of India, the local finance department and the abdication of the official bloc to the sweet will and pleasure of a communal bloc, resigned a ministry about which he had never been very keen. His successor was virtually nominated by Sir Fazl-i-Hussain, the Governor merely approved. The gentleman concerned had previously been convicted of corrupt practices. The Ministry was shortlived. The gentleman in question was again unseated for corrupt practices but the Governor was so much in the hands of Sir Fazl-i-Hussain, that he had to nominate his successor, who was the former Minister's partner, in a Rohtak practice. But Sir Fazl-i-Hussain from the constitutional point of view had achieved remarkable success and there can be no doubt that he overcame the obstacles of

dyarchy and through sheer forcefulness and successful tactics succeeded to a *gaddi* of very real power and influence.

Much as Mian Fazl-i-Hussain succeeded in the administrative sphere, by the careful and intelligent use of the powers available to him, Sir Shadilal succeeded with the like force and ability to control the affairs of the Court and generally the administration of justice in the province. While Sir Fazl-i-Hussain had an official bloc to reckon with, Sir Shadi Lal had a majority of colleagues steeped in the official tradition. Apart from some casual murmuring of disappointed claimants to the patronage of the Chief Justice, never during the long period of fourteen years, during which Sir Shadilal presided over the Supreme Court of the Punjab, was it ever breathed or whispered, or perhaps even thought that he had allowed his personal views and predilections to weigh with him in the decision of the large volume of cases of all kinds that came before him, or in the appointment of benches or allocation of the court's work. From 1920 onwards the High Court rose day by day in the estimation and affection of the people and to this tribunal resorted persons of all creeds and all means, convinced that if there was any merits in their causes, these would be weighed with measures as accurate as human intelligence could fashion them, that they would come before benches in the usual course, that no judge, far less the Chief

Justice, in whom parliament had vested great powers and discretion in the constitution of the Courts, would predetermine a case. What greater tribute could be paid to any Court and what greater proof of it, that the volume of work ever increased, out of the confidence of the people; that Judges were in arrears; that the pace at which justice could be dispensed could not equal the pace at which justice was sought. In the fourteen years, the period, which we have now reached in our survey of the life and career of Sir Shadilal as Chief Justice, never once was it suggested or one can safely say was it ever believed that there was a short cut to justice in the High Court, that hearings could be speeded up, that arguments could be radically cut short, that there could be a high speed clearance of arrears. There was only one correct way in which there could be a greater number of disposals. More judges and yet more judges and Sir Shadilal never ceased from pressing upon Government the necessity of a larger personnel in the Court.

When Sir Shadilal assumed office, the permanent strength of the Court consisted of the Chief Justice and six puisne Judges. In 1920 the Court comprised, apart from its permanent members, had two temporary judges, in the person of Mr. Justice Wilberforce and Mr. Justice Martineau. For a time Mr. C. Bevan Petman and Mr. C. L. Dundas officiated as Judges. In 1921 the number of all judges rose to twelve and

during the year R. B. Moti Sagar and Sheikh Abdul Qadir were nominated from the Bar and Mr. Harrison and Mr. Campbell member of the Civil service also acted as additional Judges. In the following year Mr. Justice Leslie Jones resigned for the reasons already stated, and Mr. Cecil Fforde of the English Bar joined the Court. Sir Shadilal also promoted a member of the Provincial Service, Mirza Zafar Ali, to a temporary judgeship, an experiment that found favour with the members of the Provincial Service. Sheikh Abdul Qadir went back to the Bar after a short period on the Bench as also Mr. Petman, who found the profession more lucrative and of greater freedom than the Bench. These examples were followed a little later by Sir Moti Sagar.

From the first month of his elevation to the office of the Chief Justice, Sir Shadi Lal proved that administrative duties, now his, did not interfere with his main functions as Chief Justice, namely to act as a Judge of the Court. The judgments of this period mark a further conspicuous development. At Oxford Sir Shadilal had proved a brilliant student; at the Bar a brilliant advocate; as Judge for six years a good Judge; now as Chief Justice, as his judgments showed, the Court possessed in him a great jurist.

In *Ali Jan V. Abdul Jalal Khan* (1 Lahore 276) the plaintiff firm constituted of six persons, one of whom carried on business at Delhi and five in the City of Mecca, than a part of the Turkish Vilayet of that name in

the Hedjaz. In November 1914, war was proclaimed between His Britannic Majesty and the Sultan of Turkey. The action, which led to the appeal, was brought for the recovery of a sum of money. It was held by Shadilal and Martineau, JJ., that nationality is not the test for determining whether a person is an 'alien enemy'. For this purpose the place of residence or the place of business where the business is carried on is the determining factor and even a British subject will be treated as an alien enemy, if he voluntarily resides and carries on business in a hostile country. Therefore, if one of the partners, of a firm is an alien enemy, neither he nor his partners who do not bear an enemy character can recover money owing to the firm in the British Courts.

In *Uberoi vs. Uberoi* (A. I. R. 1920 Lahore 168), a trade mark case, the same Judge held, after an elaborate consideration of the subject, that although no one may use a name in such a way as to be calculated to lead the public to believe that the business carried on by him is the business of some other person, with whom the name has come to be associated, but where the defendant is carrying on business in his own name, which also happens to be the name of the plaintiff, the defendant cannot be restrained from utilising his own name.

A wholly different branch of the law came before a Full Bench of five Judges, presided over by Mr. Shadilal (as he then was) a month after he became

Chief Justice. The somewhat difficult question referred to the Full Bench was whether a string of decisions of the Chief Court holding that a mortgagee is debarred from suing for the possession of the mortgaged property on the strength of a stipulation conferring on him the option to sue for interest or possession in the event of the mortgagor's failure to pay interest because on the occasion of a previous default, the mortgagee sued only for interest and not for possession (1 Lahore 457).

On the Criminal side, Shadilal C. J. clearly and emphatically insisted on the provisions of the Criminal Code being meticulously followed. In *Prahlad V. Emperor* (A. I. R. Lahore 265) it was held that the disregard of the provision of the law regarding misjoinder, vitiates the whole trial and is not a mere irregularity cured by section 537 of the Code.

In *Dalip Singh V. Emperor* (2 Lahore 308), the Chief Justice refused to uphold a conviction for contempt passed by a subordinate Court in *facie curiæ* and came to the interesting conclusion that the "question is not whether the Court felt insulted, but whether any insult was offered and intended. A judicial officer has no doubt to maintain the dignity of his court, but he must not be too sensitive, especially when his own action is not altogether justified."

In *Gajjanand V. Emperor*, a case which came before the Chief Justice in 1921, there had been an unfor-

fortunate dispute between a Hindu wife and her husband regarding the right to give their daughter in marriage. The mother first gave the girl to one man against the wishes of the father, who got the girl back and gave her in marriage elsewhere. On a prosecution for the abetment of bigamy, the father of the girl was convicted. The sentence and conviction were upheld in the High Court, the Court holding that a Hindu marriage is a sacrament and a marriage duly solemnised and otherwise valid is not rendered invalid merely because it is brought about without the consent of the guardian or even in contravention of an express order of the Court" (2 Lahore 283).

The judgment of Sir Shadilal in the important case of Beharilal V. Satnarain heard before a Full Bench in 1922 (3 Lahore 329) is typical of the clarity and erudition of the Chief Justice's pronouncements of this period. The question was of more than parochial interest and concerned the question whether an order made by an insolvency Court adjudicating a Hindu father an insolvent has the effect of vesting in the official assignee, his son's interest in the property of the joint family consisting of the father and the son. The question was answered in the affirmative in a very interesting and readable judgment.

Presiding over another Full Bench, this time of five Judges, and writing the main judgment, Sir Shadilal held that "the subject is not to be taxed without clear

words to that effect and that *in dubis*, you are always to lean against the construction, which imposes a burden on the subject." [Sunderdas V. Emperor (3 Lahore 349)]

An equally emphatic recognition of the rights of the subject, followed in Rajpal V. The Emperor, in which a Full Bench of the High Court, consisting of the Chief Justice, Scott Smith and Martineau, JJ. held that a forfeiture made by the Punjab Government under the Press Act should be set aside. In the 'Partap' newspaper an article had appeared against the Police, which resulted in the security of the Parkash Steam Press being forfeited. The Chief Justice, who wrote the judgment (in which colleagues concurred) held "I am not, however, prepared to accede to the contention that the Police officials referred to constitute a class of His Majesty's subjects. In my opinion a class or section as contemplated by the act connotes a well defined group of His Majesty's subjects and I don't think that a fortuitous concourse of one or two inspectors or sub-inspectors and a few police men, who happen to be employed at a particular place, can be designed a section of His Majesty's subjects" (3 Lahore 405).

Early in 1923, the Chief Justice of the Lahore High Court was commissioned by the King's Bench Division, to record or to have recorded by an officer to be appointed by him, the evidence on commission to be adduced by the parties to the O'Dwyer V. Nair Gibel action. This case arose out of a book entitled "Gandhi and

Anarchy" written and published by Sir Sankaran Nair, who had resigned from the Government of India on the Punjab issue and had some hard things to say about Sir Michael O'Dwyer's administration in the Punjab leading up eventually to the events of April 1919 and martial law. As a large number of witnesses for the plaintiff and for the defence had to be examined, Sir Shadilal induced the Punjab Government to appoint Mr. Rangilal (then Senior Subordinate Judge at Lahore) for the purpose of recording the evidence.

Sir Sankaran Nair, on the advice of Sir Shadilal, (who was not connected with the litigation judicially) was able to engage the service of eminent counsel and juniors on reasonable terms. The case took several months, but by the express orders of the Chief Justice in connection with pending work in the High Court, Bakhshi Tek Chand could accept the general conduct of Sir Sankaran's defence and Mr. R. R. Puri could accept the responsibility for cross-examining Sir Michael's witness. The case aroused great interest as it vitally concerned events that were still fresh in the public mind. The newspapers published full accounts of the cross-examination of Nawab Sir Umar Hayat Khan Tiwana, who was closely associated with Sir Michael's war effort and of the witnesses produced on the opposite side as to excesses committed by the Police and the recruitment agencies and as to pressure applied in the raising of war loans.

At one stage, the Commissioner, Mr. Rangilal, issued an order to the Press not to publish the proceedings, but his authority to issue this order was questioned and the 'Tribune' and 'Bande Matram' continued the reports. Sir Mohammad Shafi, himself, appeared for the defendant and with all the authority of a member of Government of India denounced the O'Dwyer's regime and what is more saw to it that his evidence was not kept back by the press.

The unfortunate verdict in this case is, however, well remembered. Sir Sankaran went to England in connection with the hearing, which took place in the summer of 1924. He had persuaded Lala Harkishenlal to appear in person as his witness before the jury, a course that necessitated the Lala's giving up his appointment as a Minister in the Punjab Government. Against the advice of Lala Harkishenlal and other friends, Sir Sankaran decided to accept a majority verdict, with the result that after Mr. Justice McCardie's notoriously one sided summing up, the jury by a majority declared for the plaintiff. This cost Sir Sankaran all his life's savings, to the tune of nearly £20,000, but it cost Punjab a great deal more and enabled Sir Michael to get away with a verdict which his record certainly did not warrant.

The main figures in connection with the tragic finale of the O'Dwyer regime passed from the stage in curiously tragic circumstances. Mr. Justice Mc Cardie

committed suicide; Sir Michael O'Dwyer fell by the assassin's hand and General Dyer died after a long and painful illness. The 'Morning Post', which of all the London Papers was the only one to whole-heartedly supported them, went out of existence. It seemed to many that the Ghost of 1919 was active for many years.

Meanwhile, in October 1923 the Lahore High Court had been able to celebrate its elevation to the status of a High Court by a substantial enlargement to its premises.

The original Chief Court was designed by J. W. Brassington, Government Architect and built about forty years earlier by J. E. Hilton engineer. It was commenced in 1880 and was completed in 1889 and cost about seventy thousand rupees. The subsidiary buildings involved the cost of a further fifty thousand rupees. Proposals were made in 1919 that the buildings should be enlarged to house the new High Court. The accommodation was discussed and settled with the then Chief Justice, Sir Henry Rattigan. On the death of Sir Henry, the proposals for extension were settled with Sir Shadi Lal. Additional accommodation was obtained by constructing two wings one at each end of the old block forming a large open space bounded on three sides by the buildings. Each of the new blocks was designed to contain two large bench rooms and three judges chambers with retiring rooms, and necessary amenities. From the entrance halls,

marble staircases would lead up to additional rooms on the first floor and to the public galleries of the bench rooms. The original work can be described for the lack of a better name, as being of Indo-Saracenic style. The building is of striking appearance and whatever criticisms may be levelled at the horizontal gallery connecting the towers and the almost Flemish gable ends the High Court building is one of the most interesting and outstanding building in Lahore. The additions while not copying the existing work in all details and material combined to form with the original building a harmonious whole. The completed edifice satisfactorily reflected the dignity of the supreme court of the Province. The sanctioned estimate for the new work amounted to about fifty thousand rupees but like most P. W. D. estimates was found to be somewhat short. The buildings were erected to the designs of Mr. B. M. Sullivan, Government Architect, and was constructed by the Buildings and Roads Branch of the P. W. D. The contractor for the work was R. B. Ram Saran Dass.

In the midst of a brilliant gathering, the following address was presented by the Chief Justice to His Excellency the Viceroy, Earl Reading, who came to Lahore specially to perform the opening ceremony of these buildings:—

“May it please your Excellency,—On behalf of my colleagues and myself, on behalf of the

subordinate judiciary and on behalf of the members of the legal profession, I extend to Your Excellency a most cordial and respectful welcome."

Sir Shadi Lal continued :—

"In inviting Your Excellency to open these buildings, I feel that we are today marking the final step, the termination of the labours begun in the sixties of the last century, in the building up of the highest court for the Punjab. The High Court, as now constituted, is a new institution in the province, the Letters Patent creating it were delivered to my illustrious predecessor, the late Sir Henry Rattigan, only four and a half years ago. But though of comparatively recent origin, it goes back in historical connection to the days, now more than half a century ago, when its predecessor the Chief Court for the Punjab, was first established by a Statute of the Indian Legislature. But since those early days, the Punjab has made rapid and remarkable progress in education, trade, agriculture and general prosperity, and the new and complicated relations and interests arising from these and other causes have rendered it necessary to expand from time to time the judicial machinery in order to cope with the ever-rising tide of work.

"It is not difficult to understand how as the work of the Court expanded, the old building, which was constructed in the year 1887 to provide accommodation

for four judges, was found wholly inadequate to meet the demands of a court of ten judges. This lack of adequate accommodation has not only hampered the work of the judges but has also caused inconvenience to the public. Not only our Single Benches but also our Division Benches have had to function in small and scarcely dignified chambers, perhaps without that full publicity, which as Bentham has remarked, is the very soul of justice. While the public were afforded every reasonable facility to watch the proceedings before the court, within the limits of our space, and to attend the hearing of all cases of general interest in the only two large court rooms available in the old building, it was nevertheless felt that we should, if possible, do more to secure that complete publicity of proceedings, which such an eminent constitutional authority as Hallam ranks even higher than the rights of Parliament as a guarantee of public security. With the additional accommodation now placed at our disposal we trust that we will be able not only to transact all judicial business in proper court rooms and to confine the Chambers to the purposes for which they are used in England, but also to provide space for the records of the various departments."

His Excellency the Viceroy in reply to the welcome extended to him by the Chief Justice said:

"Sir Shadi Lal and Gentlemen: I thank you Mr. Chief Justice, your colleagues and the members of the

legal profession for the warm welcome you have extended to me. Sir Shadilal, I am grateful to you for the eloquent reference to myself as Viceroy and former Lord Chief Justice of England. I wish I could attribute to these the value of a judicial pronouncement, but sheer modesty compels me to regard your address as the unique occasion when the Chief Justice of the High Court of the Punjab has allowed the zeal of the advocate to disturb the equilibrium of the scales of Justice.

“You, Mr. Chief Justice, have rightly observed that this morning’s ceremony is one of special interests for me. I am in a familiar atmosphere. Old associations of the Bench and Bar crowd around me. I see gathered together members of the profession in which I have spent many years of my life and which will always hold a special attraction for me. I see you, Sir Shadilal, in the place you daily occupy to dispense justice. Let me congratulate both the Lahore Bench and Bar on the possession of eminent lawyer who has been a judge of the court for ten years and its Chief Justice since the 1st May 1920. None will, I am sure, dispute the proposition that he is in every respect a worthy successor of the distinguished members of the court whose names shine forth in its annals and that its traditions of justice are safe in his keeping.

“In this gathering today I am among friends, I have been fortunate to make the previous acquaintance of a

number of the judges of the court. From among the members of the Bar, Sir Muhammad Shafi is intimately associated with me as a valued member of my Executive Council and is the member in charge of my Law Department. I see also several members of the Imperial Legislature before me. Both the ministers of Sir Edward Maclagan's Government (Lala Harkishenlal and Mian Fazl-i-Hussain) also belong to the Lahore Bar; and apart from its eminent lawyers and politicians, this Bar has the distinction of possessing as a practising member Sir Mohammad Iqbal, the celebrated Urdu and Persian Poet.

"I would that wise words might be pondered and taken to heart by those who preach and incite the practice of a non-observance of the law, who forget that in the law is vested the felicity of their fellowmen, the serenity of life and the foundation of public tranquillity in India. It is only by respect for the law and with the help of the law's protection that India can advance on the road to a wider realisation of herself and to the great place awaiting her in the Empire.

"Sir Shadilal, you have alluded to the increase of work in the court and to the new directions in which as a result of the general progress of the Punjab and its new commercial and other activities litigation is expanding. After my arrival in India, when there had been time to make an examination, I was deeply im-

pressed with the delays occurring under the present system in the administration of civil justice and especially in the recovery of the fruits of a decree by execution. These defects attracted my attention through the complaints of commercial bodies, through observations of the Privy Council in cases coming before them through conversations with members of the judiciary and the legal profession and through actual instances coming to my notice in the routine of the administration. The flaw seemed to me not due to any want of energy or capacity in the courts but to the growth of complexity in the system the courts have to administer. It appeared to me that the ends of justice stood in some danger of being conquered and enslaved by the formalities of the law itself. I need not lay stress on the deplorable result which might follow such a process. It is a stage through which the administration of the law inevitably passes and has passed at different periods in England; in more modern times steps have been taken in England to speed up machinery of too old fashioned a type for present needs and to simplify the technical processes. I felt it my duty to take all possible steps to purge our Indian administration of justice of the reproach of delays which amount to a denial of justice. The best apparent method was if possible to utilise the experience of an eminent lawyer from England with special knowledge and experience of the methods for acceleration

CHAPTER IX.

Chief Justice III

The preceding two chapters have dealt with Sir Shadi Lal's Chief Justiceship down to the end of 1923. The present chapter will deal with the principal events of the next ten years, a period in which the importance of the High Court and the prestige of the Chief Justice were further emphasised.

At the beginning of the year 1924, the court comprised, in addition to the Chief Justice, of six puisne judges—Sir Henry Scotsmith, who obtained a knighthood on becoming senior puisne Judge on the retirement of Sir William Chevis, Mr. W. A. Le Rossignol, Mr. (later Sir) Alan Broadway, Mr. (later Sir) Abdul Raoof, who had joined the Bench from the Allahabad Bar, Mr. A. E. Martineau and Mr. Michael Harman Harrison.

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Sir Henry Scotsmith Messrs Le Rossignol, Martineau and Harrison belonged to the Indian Civil Service, while the other members of the court were barristers. Mr. Cecil Fforde, a member of the English Bar, continued to act as an additional judge. R. B. Motisagar in 1924 stepped down from the seats of the mighty, and made way for the elevation to the bench of R. B. Jailal, then Government Advocate. Mr. Zafar Ali and Mr. Campbell continued to work as temporary judges of the court.

The following year marked the closing chapters in the Governorship of the Punjab of Sir Edward Maclagan, and the advent of a new policy with the arrival of the new Governor, Sir Malcom Hailey, who brought with him a great reputation for strenuous work and independence as Home Member of the Government of India. On his accession to the Governorship the main question which the province asked was, whether there could be two rulers in the Punjab, Sir Macolm Hailey and Sir Fazl-i-Hussain? Would there be an explosion? How could the Governor manage without the rural votes securely held and deftly managed by the Minister of Education? On the other hand how could the Minister do without the official bloc, the only means of his retaining his influence paramount in the counsels of the administration?

In the midst of these eddies in the currents and cross currents of political intrigue, the High Court stood solidly aloof and unaffected. The Chief Justice was

concerned shortly in the oath he was called on to administer to the head of the Government, it was no province of his office to see whether that oath was invariably remembered.

Few Chief Justices had the duty or opportunity to administer the oath to so many and varied type of administrators—to Sir Macolm Hailey, as Governor of the Punjab; to Lord Irwin as Viceroy and Governor-General of India in 1925; to Lord Lytton in 1927, to Sir Herbert Emerson in 1933 and to Sir Sikandar Hyat on the two occasions, when he was called on to act as Governor of the Punjab in the absence first of Sir Geoffrey de Montmorency in 1932, and Sir Herbert Emerson in 1934.

But the fact that the Chief Justice was not concerned in the political events of the province did not, however, imply that he had few contacts with the administration. Apart from the actual hearing of the cases, which came before the court, in which it was the duty of the Chief Justice to see, that no executive considerations and influences were permitted to intrude, a matter in which Sir Shadilal's most obstinate critics had never any complaint, there were many matters upon which the High Court had perforce to seek the Government and *vice versa*. Matters relating to the appointment of judges of the court, the office of the Government Advocates, counsel for the Crown and for undefended prisoners, the appointments of the staff of the High Court, their emoluments, leaves and pensions consisted in part of the func-

tions of the High Court, in which there was and must in the nature of things be continuous contact with Government. The Chief Justice it may be said was generally the final and ultimate authority in all these matters. There was never any conflict between the Court and the executive over such important questions and almost invariably the Chief Justice had his way. The tact and skill with which the Chief Justice had his way were, in the words of Sir Henry Craik, then a member of the Punjab Executive, those of a 'wizard.'

The main function, however, of the Chief Justice, a function that is continually in the eyes of the public and before his own colleagues, is the allocation of the courts judicial work and the appointment of benches. Considering that Sir Shadilal, as captain of the ship of the law had colleagues of various temperaments, and time and again the ship was about in tossed political storm and riding different moods and current passions the long voyage of thirteen years was remarkable for its safe and comparatively smooth passage. The Chief Justice proved the capacity of his countrymen to administer the autonomy of the High Court.

Sir Shadilal can look back with no little pride that during his custodianship of the office of Chief Justice it was never mooted that his court approached any question with bias or with pre-conceived ideas. Never was the Chief Justice suspected, far less accused in the open or in private, that he constituted any bench to

procure a preconceived verdict or manoeuvred a case either to his or to any other bench with any ulterior motives. True there are rules to guide a Chief Justice and in which he can shelter for excuse, but vast discretion is vested in him and if he twists a rule to suit his purpose, there is none his will to dispute. A long a painstaking study of the authorised and unauthorised reports will reveal only one thing, a stern and correct standard in the exercise by the Chief Justice of the discretion vested in him, a rectitude never compromised. Sir Shadilal in his exalted office proved not only that he was a great Judge, but what is much more difficult an honest Judge.

The appointment of Mr. Justice Dalip Singh in 1925, following the retirement of Mr. Justice Abdul Raof, was symptomatic of the difference in the standards applied to appointments in the Government and appointments in the High Court. On the retirement of Lala Harkishenlal from the Ministry, the Governor, then Sir Edward Maclagan, chose as his successor, one who had only recently been found guilty of corrupt practices. The vacancy in the Bench was not, however, allowed to be filled by the influence of the predominant party in the Legislative Council, though there was more than one aspirant from this direction. There was also clamour among various communities for the seat—Muslims claimed it with some justification, in as much as Mr. Justice Abdul Raof was a Muslim,

and a deputation went to the Governor in this connection. The Sikhs demanded the seat on the plausible reasoning that both Hindus and Muslims had had opportunities to display their talent on the bench; it was time the Sikhs should also be permitted to show what the community could produce in the matter of legal talent. It was well known that the Chief Justice was anxious to obtain talent and integrity irrespective of communal considerations. The choice of Sir Macolm Hailey and Sir Shadilal coincided in the person of Kanwar Dalip Singh, then Government Advocate Punjab. Muslim opinion was undoubtedly chagrined, but the choice was generally received with approbation. Kanwar Dalip Singh had had a brilliant career and was the son of one of the best loved and respected Christians of his time, the late Raja Sir Harnam Singh. He was also closely related to the Ruling house of Kapurthala and hence not unwelcome to the Sikh community. As Government Advocate he had no doubt the right of first refusal and it goes to the credit of both the Governor and the Chief Justice that the vacancy caused by the retirement of Mr. Abdul Raoof was satisfactorily filled.

Mr. Justice Dalip Singh first held office as temporary Judge and later as additional Judge of the Court and was not confirmed as a Puisne Judge till 1928. Meanwhile the learned Judge figured in one of the most unhappy controversies that have ever torn this communal stricken province.

In May 1927 the case of one Rajpaul, a local publisher came before him in which the petitioner had been convicted and sentenced to imprisonment, for a period of six months for publishing a scurrilous pamphlet about the Prophet of Islam. The case had taken nearly two years in the lower court and very naturally aroused considerable public feeling on the subject. Mr. Justice Martineau, in the course of a revision petition, from an interlocutory order had complicated matters by coming to a conclusion, no doubt honestly, but entirely, erroneous, that evidence of a certain sort would be relevant. The trial court found the accused guilty of publishing a grossly improper book and from the Sessions Judge Lahore, who rejected the appeal, the accused rightly got no sympathy.

Mr. Justice Dalip Singh came to the conclusion that the petitioner would have to be acquitted on the ground that the offence charged was not one that could be said to be within the four corners of the Indian Penal Code as it then stood. The Judge, however, made no concealment of his feelings in the matter and held that the publication for which Rajpal had been convicted was a "scurrilous pamphlet" "written undoubtedly with the intention of wounding the religious feelings of the Muslim community" and as such "could only arouse the contempt of all decent persons of whatever community." It was, therefore, "with great

regret and reluctance" that the letter of the law was accepted (A. I. R. 1927 Lahore 590).

This decision was the signal for one of the most bitter inter-communal controversies. The acquittal of Rajpaul was interpreted as a decision in favour of such literature. In the dust of controversy, the fact that the Judge had expressly denounced the motives for the publication of the book was forgotten. The "Muslim Outlook" led the campaign with an article headed "Resign" demanding in the first place that Mr. Justice Dalip Singh should vacate his seat on the Bench having 'betrayed a deplorable lack of experience and of a sense of responsibility', and secondly that "an enquiry should be held as to the circumstances, under which that extraordinary judgment was written."

Proceedings for contempt were less frequent then, than they subsequently became. The Crown, however, moved that proceedings for contempt be taken against the Printer and Publisher of the "Muslim Outlook" for the insinuations contained in the article in question. The Chief Justice constituted a Bench of five Judges to hear the case. The Chief Justice and the Judge concerned—Mr. Justice Dalip Singh—wisely left this matter entirely in the hands of their colleagues. The personnel of the Bench called for no grouse. It consisted of Sir Alan Broadway, who presided, Mirza Zafar Ali, Addison, Tek Chand and Coldstream JJ. The brief for the 'Out-

look' was declined by Sir Mohammad Shafi and other leading members of the Bar, but a number of comparatively junior members, headed by Ch. Zafarullah Khan appeared for the accused. The Crown was represented by Mr. Cardon Noad Government Advocate. The hearing aroused the interest of a State trial. Counsel for the editor questioned the jurisdiction of the court to try for contempt but was over-ruled. The editor and publisher were found guilty and committed. Sir Alan Broadway's judgment as to the jurisdiction of the court to commit for contempt *ex-facie curie* was not however, entirely convincing (A. I. R. 1927 Lahore 610).

There was more fat in the fire on the acquittal of Rajpaul. There were riots and Lahore had an orgy of murders by one community and then another, in which mainly innocent people of both communities were the main sufferers. The Government to assuage the situation received a deputation headed by (then) Sh. Abdul Qadir about the Rajpaul judgment. Government, he said, looked to a further elucidation of the law in another case then pending in the courts—the Vartman case. This case was transferred to the High Court and Mr. Justice Skemp was nominated by the Chief Justice to hear the case, in order that there should be no doubt whatever as to the motives or inclinations that might inspire the eventual result. Difficulties, however, were apparent in that Mr. Justice Skemp was junior to Mr. Justice Dalip Singh, and, could not, in any case, as a

single judge, possibly over-rule the interpretation of the law as laid down in the Rajpaul case. In view of these difficulties a Division Bench sat to hear the matter. Sir Alan Broadway and Mr. Justice Skemp, in Division Bench, therefore, heard the Vartman case. Nobody could ever allege that they were biased one way or another. The result was an interesting trial of great public importance, in which Sir Mohammad Shafi was briefed for the Crown and Mr. B.R. Puri represented the accused. The trial resulted in a conviction of the accused and an interpretation of section 153A of the Penal Code more in consonance with the Muslim view point of the law. (A.I.R. 1927 Lahore 594) To avoid any doubts for the future, however, the legislature amended the section.

During this period the position of the Chief Justice was, undoubtedly, one of very great delicacy and difficulty. The tact with which he handled the situation at all stages was warmly appreciated by Government and the public equally. सत्यमेव जयते

Meanwhile some change had taken place in the High Court at the close of year 1926 fresh election to the Legislative Council had been held. The Swarjists, generally, swept the polls. In the Central Legislature shone a greater galaxy of political stars than has ever sparkled in the legislative firmament. Among these where Pt. Motilal Nehru, Lala Lajpatrai, Sir Parashotamdas, Thakurdas, Mr. Jinnah and several other persons of great importance. To the Punjab Legislative Council

was returned Bakhshi Tek Chand then head of the Bar and one of the most influential of the leaders of the Hindu community. But Bakhshi Tek Chand's advent into the realm of politics was shortlived. The Chief Justice had ear-marked him for the Court and had no intention of allowing his brilliant talents to be diverted to a more spectacular but probably less convincing role on the political stage. Both the Governor and Sir Fazl-i-Hussain realised that the Bakhshi's influence and advocacy were not likely to be employed in the legislative council either in the cause of the ministry or of the Government as a whole. There was general agreement, therefore, that Bakhshi Tek Chand would be more useful as a Judge of the High Court. He received accordingly, the distinction of a nomination to the Bench as puisne Judge superseding several of his contemporaries, who had been acting as Judges before him. Mr. Justice Tek Chand, if one may say so with respect, more than justified the confidence which the Governor and the Chief Justice and other members of the bar had in him, and without any comparisons which are always unpleasant, at once became a principal and outstanding member of the Court.

The 'Muslim Outlook' case, already referred to, was the third of its kind in eight years to come before the High Court in matters of contempt since the High Court was established in 1919. Judges in the time of Sir Shadilal, were not unduly sensitive to adverse opinion or criticism and proceedings in *brevi manu* were not utilised by the

Chief Justice or his colleagues as a short cut to justice. Nor were proceedings for contempts of court resorted to enforce the High Court view point or any of its policies. The first contempt case to come before the Court was in 1926—seven years after the Court was established—in which Syed Habib, a journalist, was sub-poened for an article in bad taste against one of the Judges. The Judge in question, Mirza Zafar Ali, was content to leave his honour in the hands of his colleagues. Broadway J., in disposing of the case, convicted the editor relying in respect of the Court's jurisdiction in such matters on the authority of certain rulings. It cannot, however, be said that these were very carefully considered. The matter was settled by apology and fine (A.I.R. 1926 Lahore).

In the year 1924 and onwards, the Chief Justice continued the series of important judicial pronouncements of the highest value begun by him in 1920, when he took office and which have already been referred to. In *F. Lalchand Mangal Sain Vs. Firm Beharilal Meharchand*, a full Bench of five Judges (Chief Justice with Le Ros-signal, Abdul Raoof and Martineau JJ) came to the conclusion that an interlocutory order is not within the definition of the term 'case' within the meaning of section 115 of the Code of Civil Procedure and hence the High Court has no jurisdiction to entertain an application for the revision of an interlocutory order. In coming to this conclusion, Sir Shadilal C. J., who wrote the main judgment, was not unconscious that there might be cases "i

which grave injustice might result for an incorrect decision of a subordinate court, unless the mistake is rectified at once by a superior court" and "cases of hardship are bound to arise". "It would be desirable" continued the judgment "to provide a remedy for correcting errors, which may, otherwise, cause irreparable injury", but "hardship, however, grave should not influence our interpretation of the statute and we must leave it to the Legislature to amend the section or enlarge the powers of the High Court under Order 43, Rule 1, C. P. C." (5 Lahore 288).

On the criminal side equally important pronouncements were forthcoming. In *Nur Ali Vs. The Emperor, Shadilal, C. J. and Fforde, J.* held that in a criminal trial, it is the duty of the Court, before which an extrajudicial confession, not incorporated in a document, is relied upon, to scrutinise the whole material before it, and then to decide whether there is sufficient evidence to establish the confession. (5 Lah. 140).

In the same year Sir Shadilal presided over two Full Benches constituted to deal with questions of the very first importance. In *Lee Vs. Lee* (5 Lahore 147) the question upon which the Court was invited to pronounce its opinion was one of vital importance to European British subjects residing in India. But briefly the question was whether mere residence within the forum confers jurisdiction upon the Indian Courts to grant a

decree for the dissolution of a marriage between persons, who are not domiciled in India, in other words "whether residence or domicile is the test of jurisdiction in granting a decree for divorce as distinguished from a decree for judicial separation." The case came up before a Full Bench of five Judges presided over by the Chief Justice. Others who sat with him were Scottsmith, Le Rossignal, Harrison and Fforde, JJ. In an extremely lucid and readable judgment, in which the other judges expressed accord, the Chief Justice came to the following conclusions :—

- (a) Mere residence within the forum confers jurisdiction upon the Indian Courts to grant a decree for the dissolution of a marriage between persons who are not domiciled in India. The residence, however, as contemplated by the Statute, means ordinary residence and not a mere temporary presence in a country such as those of a traveller and such residence must be *bona fide* residence and not one acquired for a fraudulent or collusive purpose. The word 'resides' in S. 2 is used in its ordinary sense and is not intended to mean "is domiciled."
- (b) The function of the Court is to administer the law as it finds it and not to modify it in the light of the laws of another country or in accordance with their own notions of expediency in order to produce a uniform result. In a vital matter like divorce it is desirable that all civilised countries should observe

the same rule regarding jurisdiction, but there is nothing to prevent one country from adopting a rule different from that followed by another country; and if a different rule has been laid down by the Municipal Law of a country, the Courts of that country are bound to give effect to that rule irrespective of the consequence which may flow from it.

- (c) There can, at the same time, be no reasonable doubt that the principle now adopted by the English Courts is that jurisdiction in the matter of divorce depends upon the domicile of the spouses at the time of the commencement of the proceedings, and that this test is applied by them in determining not only the jurisdiction of foreign Courts but also their own jurisdiction. It follows that a decree of divorce granted by a foreign Court is invalid in England if the parties to the marriage are at the time of divorce not domiciled in the country where the Court pronouncing the decree exercised jurisdiction. We may, therefore, take it that the Courts in England will not give recognition to the decree granted by the Indian Courts to parties not domiciled in India. The decisions of the English Courts no doubt furnish some instances in which such decrees have been assumed to be valid, but the considered opinion is to the effect that these decrees having been pronounced by courts incompetent to grant them cannot have operation in England.

This conflict of laws is bound to lead to the scandal, which was strongly deprecated by Lord Penzance in *Wilson V. Wilson* that a man and woman are held to be man and wife in one country and strangers in another. The scandal is not confined to their own personal relations, but affects also the validity of a subsequent marriage entered into by either of the parties, the legitimacy of the issue of that marriage, and succession to the property owned by the parties to the second marriage. Indeed the second marriage could be treated by the English Courts as a bigamous marriage and the parties can be arraigned before a Criminal Court. These and other consequences which must result from a conflict between the two systems of law are very serious matters, and while they cannot influence the decision of the Courts, they must receive due consideration from the authorities who are responsible for amending the law.

In the full Bench *Mst. Attar Kaur, etc. V. Nikko* (5 Lahore 356) Shadilal, C. J., Scottsmith, Le Rossignal, Broadway and Abdul Raoof, JJ., adopted the viewpoint of the Chief Justice, that according to custom in the Punjab, property inherited from a maternal grandfather through his mother, is ancestral and a daughter's son's son can, therefore, control the disposition of it.

The proceedings before other Full Benches, generally of five Judges presided over by the Chief Justice will be

found in the law reports of these years. The views of the Full Benches were generally expressed by the Chief Justice. The following by reason of their importance may be mentioned :—

In *Sant Singh V. Gulabsingh*, Shadilal, C. J., Broadway, Tek Chand, Jailal and Agha Haidar, JJ., held that under Order 22, Rule 4, C. P. C. if one of several respondents dies and the legal representatives are not impleaded in time, the whole appeal does not abate (10 Lahore 7). In *Khangul Vs. Lakhasingh*, Shadilal, C. J., Broadway, Harrison, Tek Chand and Dalipsingh, JJ., held that where an infant has induced a person to contract with him by means of a false representation that he is of full age, he is not estopped from pleading his infancy in avoidance of the contract, in spite of the terms of Section 115 of the Evidence Act as to estoppel. The provision of this Act it was held must be read subject to the provision of the Indian Contract Act, declaring a transaction entered into by a minor to be void (9 Lahore 701).

In (*Bhagat*) *Jiwandas Vs. Income Tax Commissioner, Lahore*, Shadilal, C. J., Broadway, Zafar Ali, Tek Chand and Jailal, JJ., held (per Shadilal, C. J.) that if the Crown cannot bring the subject within the letter of the statute, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be (10 Lahore 65).

A case of more than local interest that came before the Chief Justice and Broadway, J. in 1929 sitting as a Letters Patent Bench was the claim of Mr. C. M. G., Ogilvie for damages for defamation against the Punjab Akhbarat and Press Company, the proprietors of the Bande Mataram Newspaper. The case had had an extraordinary history. Mr. Ogilvie's suit related to his conduct as Deputy Commissioner of Shahpur and his treatment of certain persons, described in the article, as 'patriots'. Mr. Ogilvie claimed Rs. 15,000 as damages, but the subordinate Judge who heard the case found that Mr. Ogilvie had not behaved, quite as he should and decreed his claim in the contemptuous sum of a hundred rupees. On appeal to the High Court, Mr. Justice Martineau and Mr. Motisagar differed, with the result that the decree of the lower court was maintained, the appeal failing. A Letters Patent was preferred and the case was heard by the Hon'ble Chief Justice and Mr. Justice Broadway in 1929. Broadway, J., who wrote the judgment, held that the finding of the Subordinate Judge was not entirely warranted and the language used by him as descriptive of Mr. Ogilvie's behaviour was uncalled for. The result was a decree for Mr. Ogilvie for the sum of Rs. 2500 with proportionate costs. (11 Lahore 45).

The elevation to the Bench of Bakhshi Tek Chand in 1927 left Mr. Jagan Nath Aggarwal whose advocacy was excelled only by as his command of the English language, supreme on the civil side of the High Court.

Sir Mohammad Shafi before coming to the Viceroy's Executive Council had commanded a lucrative civil and criminal practice, but on his return from the Government of India Sir Mohammad Shafi confined himself to the more spectacular and lucrative criminal side of the Court. Between 1925 and his death early in 1932 Sir Mohammad Shafi commanded fees unequalled at any time in the history of the Punjab Courts. Other leading members of the Bar, who predominated, while Sir Shadilal presided over the Court, may be mentioned—Sir Abdul Qadir, who brought with him the unfailing character of success—an ex-judgeship of the High Court. Sir Motisagar combined eminence as an educationalist and Vice-Chancellor of the Delhi University and a lucrative practice on the civil side of the High Court. On the criminal side, apart from Sir Mohammad Shafi, Mr. B. R. Puri, Mr. Aziz Ahmad and Mian Abdul Aziz skimmed the cream. Among those, who were then making highway were Mr. Mehr Chand Mahajan (at present President of the High Court Bar Association). Diwan Ram Lall (now Mr. Justice Ram Lall), Mr. M. Sleem (now Advocate General Punjab) and Rai Bahadur Mukandlal Puri, who has more than once missed an exalted destiny by inches. Dr. Sir Gokal Chand Narang for a few years led the Bar, which he left to lead his community in the more ample field of politics combining law and politics, Sir Gokal Chand also specialised in sugar factories and accumulated vast fortunes from these sources.

Sir Shadilal's relations with the Bar were at all times cordial. Both juniors and seniors welcomed the opportunity of appearing before him. There was no case reported, where it is said that Sir Shadilal had lost his temper with counsel. He would hear the most unconvincing arguments with both patience and respect. He scarcely ever confused a bad argument with the status of the Advocate, or failed to appreciate the excellence of a point coming from a junior member of the profession. He was invariably well prepared and his own knowledge and experience invariably stood him in good stead. He never dismissed a case without smiling kindly at the unsuccessful Advocate and it was generally said of him that his smile was more ominous than his frown.

In the course of Sir Shadilal's term of office as Chief Justice, there were some occasions, when he was called upon to demonstrate the supreme power of Chief Justice to maintain the integrity and independence of the High Court. It is said that on one occasion there was an attempt by an important official of the Government to procure the hearing of a certain case, in a certain way. Sir Shadilal made it quite plain to the person concerned that if there was any repetition of the effort, he would never hesitate to issue a notice for contempt against any member of the Government concerned—no matter how exalted he might be. Needless to say, the attempt was never repeated.

From a scrutiny of the large number of cases, in the reports both authorised and unauthorised, it is perfectly plain that the wide discretion vested in the Chief Justice was invariably exercised with consummate tact and honesty of purpose. Special conspiracy cases, which came up to the High Court were assigned to both Senior European and Indian Judges, almost invariably one of each nationality; Full Benches, on important questions of law, usually consisted of five judges, so that any one particular angle or view-point would not predominate, and all judges at all times shared equally in discharging the functions of the Court. No greater tribute could be paid to any Chief Justice than to say that he held the great office for the long period of thirteen years and the thirteen years in which he so acted were marked by the absence of any real or fundamental differences with his colleagues, Government, the Bar or the public.

The survey of Sir Shadilal's tenure of office as Chief Justice would not be complete without a brief reference to the events in the last three years of this epoch, events which if not actually the concern of the Chief Justice personally contributed to enhancing the reputation of the Court in his charge.

In 1931, following in the wake of a long era of economic depression and the Ordinance of September of that year, with the Governor-General discharging his obligation to sell gold on demand, and his obligations as

to sterling and currency, the new People's Bank suspended payment. In the months preceding it, many important institutions, such as the Central Bank of India, the Punjab National Bank had shown signs of the acute public uneasiness arising out of the general economic situation. In 1913 when such a crisis arose, the executive was, it was generally believed, to be instrumental in inspiring it. Even if this was not so, there was no doubt that Sir Michael O'Dwyer's Government for many years influenced the aftermath. All efforts at resuscitation or revival of the banks concerned were frustrated. The Chief Court took no different view. When Mr. Justice Broadway became Company Judge of the Chief Court, the executive view-point towards Indian institutions in general and Lala Harkishen Lal's institutions, in particular, was clearly apparent.

In 1931, when the second People's Bank suspended business Mr. Justice Tek Chand was Company Judge. It was well known that many people wanted the bank wound up; firstly, almost every member of the auditor fraternity looked himself as a prospective liquidator and dreamt of castles and untold wealth; secondly, many prominent debtors of the Bank hoped to clear their debts by the purchase of the Bank's deposits on attractive terms. Both L. Harkishenlal and L. Mulkraj Bhalla, then Chairman of the Bank, were averse to the winding up of the Bank, as such a proceeding involves no gain to any one bar the liquidator and usually

involves a great deal of expense, worry and general misery.

The directors of the Bank persuaded the High Court to accept a scheme of resuscitation and the People's Bank was permitted by the High Court to recommence in 1932. The scheme of resuscitation was twice amended by the High Court, and it can be very well stated that while Sir Shadilal remained as Chief Justice and while Mr. Justice Tek Chand acted as Company Judge, no serious effort to save important institutions was turned down. This was all the more creditable as there had been marked differences of opinion, from time to time, between L. Harkishenlal and Sir Shadilal and Lala Harkishenlal and Bakshi Tek Chand. The differences with Sir Shadilal could be traced to twenty years and with Tek Chand, J. since 1926 when Lala Harkishenlal supported his opponent L. Dunichand for the Lahore seat. It goes all the more to the credit of the Chief Justice and the then Company Judge, that no differences of a private character were permitted to intervene, where the general interests of a public institution were concerned.

The subsequent history of the winding up of the People's Bank, the disappointment of the local accountant fraternity, at the advent of a ready made liquidator from another province, the fabulous earnings of a certain receiver, the scandal of forced sales, the growth of contempt cases, the fall of Lala Harkishenlal and his institutions belong to another era and another book.

In concluding the survey of the activities of Sir Shadilal as Chief Justice of the Lahore High Court, and first Indian to be permanent head of such a Court, mention is necessary of two appointments that evoked much interest at the time and have since given considerable satisfaction. In the summer of 1923, Mian Abdul Rashid, then one of the Assistant Legal Remembrancers was appointed on the recommendation of Sir Shadilal to be an acting Judge of the Court. Mian Abdul Rashid came from the well known Baghbanpura family and was the brother of Lady Shafi. His rise in the profession had been steady. His career at the Bar was not marked by any of the spectacular characters that distinguished the career of his brother-in-law, Sir Mohammad Shafi. But Mian Abdul Rashid was known in the Court as one, who possessed a sound knowledge of the law and was popular with all communities and singularly devoid of any party leanings. In the following year, Sir Shadilal recommended another member of the Muslim Community, K. B. Din Mohammad, then a permanent member of the Ministerial party in the Punjab Legislative Assembly for elevation to the Bench, thereby finally disposing of any suspicion that persons with pronounced view-points were handicapped for promotion. Without fear of contradiction it may be safely said that the choice of Sir Shadilal in picking his judges has stood the test of time and both Mr. Justice Abdul Rashid and Mr. Justice Din Mohammad are as popular judges as ever sat on the Bench.

If it is not transgressing the limits of a biography, it should also be mentioned that other Judges appointed with the approval of Sir Shadilal have also, generally, and perhaps, with scarcely any great exception, justified the wisdom of the appointment. Mr. Justice Jailal who served on the Bench from 1924 to 1938 and Mr. Justice Bhide, who still adorns the Bench of the Court, were two more Judges, if one may say so, where the Chief Justice's choice was abundantly justified.

Sir Shadilal was once asked as to the qualifications looked for by him, when selecting a Judge. He smiled and said, "Like a well known Lord Chancellor, I first look for a gentleman; if he knows some law, it is an advantage."

Many a good Judge has learnt law after elevation to the Bench. Sir Shadilal was right in looking for the gentleman first, for, if a man is not a gentleman, the fact that he is Judge will not make him one.

CHAPTER X

Farewell to the High Court

Every officer judge or chief justice might be feted on arrival or on the assumption of office but it is only the successful who are feted and honoured when they have to go. It is at this time that the value or the success of an administration of a judge is to be estimated; it is at this time that sycophants have no further *locus standi*, when friends have nothing to gain and something to lose, when it is only the past and not the future that is in view.

From the extent and measure of the tributes paid to Sir Shadilal on his retirement, it was evident that the province deeply regretted the departure of a great captain from the helms of justice. The universality of the tributes paid to him indicated the height and

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dignity attained in the eyes of the people not merely by himself but by the Court in his charge.

Among the earlier and more important functions organised to bid farewell to the retiring Chief Justice was an "At Home" given by the Christian Community of the Province. Among the hosts were the Bishop of Lahore, Professor G. C. Chatterji, Dr. S. K. Datta, Mr. P. N. Dutt, (Mr. Justice Dalip Singh), Raja Raghbir Singh, Mr. B. L. Rallia Ram and Mr. K. L. Rallia Ram.

On the following afternoon Sir Abdul Qadir a former Judge of the Lahore High Court entertained Sir Shadilal to a large representative gathering at which many members of the Muslim community assembled.

An unusual tribute came from an unexpected quarter, an address from the subordinate establishment of the High Court :

"You have always treated all members of the staff, who were honest and faithful in the discharge of their duties, as members of your own family, while remaining a relentless champion of the eradication of bribery and corruption and a pronounced enemy of inefficiency and your personality was a great example to the younger generation."

The address also referred to the brilliant career of Sir Shadi Lal and to his popularity as Chief Justice of the Lahore High Court.

The Chief Justice replying thanked the establishment for the expression of their appreciation of his efforts to improve standards of service. He was of the opinion that the establishment was rendering a very valuable service to the Judicial Department of this province and he wished them success and prosperity in the future.

Five hundred guests of all communities assembled at a Garden party given at Amritsar, second city of the province.

Sir Shadi Lal who arrived just before the party was due to begin was accorded a rousing reception. The party was organised by leading citizens. The guests included European and Indian ladies, many people from the neighbouring districts.

Meanwhile the new Chief Justice had arrived and a cordial reception was accorded to Mr. Justice Young, at the Lahore Railway station on May 4.

All Judges of the High Court including the Chief Justice, Sir Shadi Lal, were present, besides men of the Bar and representatives of other classes of society, lawyers, doctors, college professors and representatives of public bodies formed the major portion of the company. His Excellency was represented by an A.D.C. and the Punjab Government by the Chief Secretary Mr. G. C. Garbett.

Mr. Justice Addison was the first to receive the new Chief Justice, to whom other judges and Mr. Jagan

Nath Aggarwal President of the High Court Bar Association and others were introduced. Mr. Mohammad Rafiq, Bar-at-Law formally welcomed him on behalf of the District Bar Association.

An elaborate and cunning scheme of illumination turned the Shalimar Gardens of Lahore into a fairyland on the night of May 4, when Sir Shadi Lal was entertained there at a unique and memorable evening party. The most wonderful display of fire works ever witnessed lasted for an hour and a half.

His Excellency the Governor and Sir Shadi Lal's successor, Mr. Justice Young, were present besides several thousands of spectators. Invitations to the party had been issued over the signatures of no less than three hundred prominent men from all over the Punjab. The attendance was so large that the seating accommodation did not suffice for even half the assembly.

On May 7, 1934 Sir Shadi Lal handed over charge to his successor. At 10-30 a. m. precisely, the judges in impressive and imposing array streamed into a court room filled to capacity and took their seats at a long table under a royal canopy. Sir Shadi Lal sat in the centre with Mr. Justice Addison to his right and Mr. Justice Coldstream to his left. The other judges sat in order of their seniority. Mr. Justice Addison paid an outstanding tribute on behalf of his brother Judges and the general regret of the province on the retirement of the first Indian to be a permanent Chief Justice. He

also referred in feeling terms to the great honour done to the Court in the elevation of one of its members to highest tribunal in the Empire, the Judicial Committee of His Majesty's Privy Council. As might well be expected, the tribute from the Bar was no less eloquent and sincere.

There was tense silence during Sir Shadi Lal's reply. The retiring Chief Justice after thanking the members of the Bar, paid a tribute to his colleagues on the Bench of the High Court, who he said had always given him willing co-operation and had contributed to the reputation which the High Court had acquired for independent and impartial administration of justice.

Referring to the principles of political liberty as recognised by British Courts, he said ;

"In this connection it is instinctive to mention the case which was recently tried in England. A communist who had been convicted of a breach of law claimed damages against the head of the London Police on the ground that a bundle of papers which the Police had lawfully seized had been detained longer than was justified. The case was tried before the High Court and he was awarded for this ordinary mistake £ 80 as damages.

"This case was recently cited by Sir John Simon as an illustration of the liberty enjoyed by

the British people and he pertinently asked : in what other country in the world could that have happened ? Here was a man who had been sentenced and who was opposed to the whole system of the Government of the country, but who nonetheless had a perfect right to resort to the ordinary courts of the land against a high official whose subordinate had made what in my view was only a mistake without malicious intent ; and yet they questioned the law of England, which is administered impartially for everybody and awards him compensation as though he was a member of the society. Would it be improper to what would be thought of a judge in India, who imbued with the traditions of British Justice had acted in a similar manner. Would he not, thereby subject himself to disfavour and even resentment which would be manifested in no uncertain manner ?

“These and other disadvantages have sometimes to be borne subject silentio by a person who is true to his oath, the oath which he solemnly takes on accepting the office of His Majesty’s Judges.

“He has to follow the doctrines of British Justice embodied in the memorandum which was prepared about two years ago and stand equally between the Crown and the Executive and between the Executive and the subject. It was true liberty

in a country where the judges are not entirely independent of the Government and the soundness of the remark has never been questioned.

"This is an authoritative announcement to which no reasonable person can take exception. It further said that these doctrines of the *English Constitution* cannot find full scope in this country, where there are peculiar circumstances which tend to impair the independence of the judiciary. On principle I am unable to see any valid ground for making such a distinction and I trust that no judge of this court will ever depart, in the slightest degree from the solemn promise, which he makes before entering upon his duties even if he is subjected to personal disadvantages.

"The position cannot be disputed that the confidence of Indians of all schools of thought in the even-handed justice administered by the High Courts in British rule in this country lies in this and that any person who does any act tending to shake that confidence causes the greatest possible harm to that rule.

Referring to the delay in civil cases, Sir Shadi Lal said :—

"The magnitude of the task undertaken by the Judges can be gauged by the fact that the number of persons under sentence of death whose cases come up annually is ordinarily greater than the total

number of those dealt with by four other High Courts in India put together. You will be surprised to learn that the number of murder references sent up by the Sessions Judges to this Court in January 1931 (in one month alone) reached the high figure of 39.

‘It is not difficult to understand that parties to civil litigation who are required to pay fees feel aggrieved by the delay in their disposal. These persons naturally expect that a portion of the large profits derived from the income of civil litigation should be spent in providing additional Judges for their cases.

After this function, came the official welcome to the new Chief Justice Mr. Douglas Young.

Interesting suggestions for the solution of the allied problems of perjury and delay in the disposal of cases were made by Mr. Young, in the course of his reply to the welcome by Mr. Jagan Nath Aggarwal, Diwan Ram Lal and Mr. Justice Addison on behalf of the Bar, the Law Officers of the Crown and the Judges of the High Court.

Diwan Ram Lal, Government Advocate associated himself with the sentiments expressed by the President of the Bar Association.

Mr. Justice Addison on behalf of the Judges of the High Court welcomed the new Chief Justice and assured

him of "our most loyal help and co-operation". He added :—

"All of us have had the pleasure of meeting you outside the Court since your arrival and have had some experience of your courtesy and charm of manners, qualities which go far to make work pleasant, in this country.

"You are the third Chief Justice of the Court. The first was Sir Henry Rattigan, who spent practically the whole of his life in the Punjab (as did his father before him) and who is still remembered for his legal knowledge and kindness of heart. The second was Sir Shadi Lal, another Punjabi, who has just left us to take his seat in His Majesty's Privy Council, a rare distinction which he has won by his outstanding ability and marked legal acumen. This time we have gone to the High Court nearest to us in order to find his successor. The growing importance of commercial cases and of liquidation and insolvency proceedings in the Punjab makes a Judge of your experience and capacity in this direction all the more welcome. We are sure that under your guidance the reputation of this lately established High Court will continue to expand.

"Your more youthful activities and success in the field of sports and your service with the army during the Great War indicate a bodily vigour which will enable you to stand the stress and strain imposed

upon you in the sphere of duties. With the great burden, with heavy arrears and with the additional weight of the administration falling upon your shoulders, you will, I have no doubt, be glad that you have trained your body to such a degree of fitness that your mind cannot possibly fail to function at its best. In this connection we note the success which has attended your demonstration of the Boy Scout Movement in the United Provinces. This indicates that your interests will extend to other matters which affect the well-being of the province besides the administration of justice.

“We venture to take this opportunity of expressing the hope that in your time financial conditions will permit the provision of funds, sufficient to provide the Court and the subordinate courts with proper and dignified accommodation. You cannot have failed to notice the contrast between the palatial courts at Allahabad and the inadequate and uncomfortable premises in which fourteen Judges carry on their duties here.”

Mr. Justice Young in the course of his reply referred to the delay in hearing appeals, which was, he said, common to all High Courts in India.

Mr. Justice Young also made the following interesting observations on the matter of perjury and false evidence :

“When I came to India I was struck by the fact that in almost every case, civil or criminal where evidence had to be discussed in appeal, I was informed by eminent Indian counsels of long experience that evidence in this country was almost wholly unreliable and that perjury was the curse of the administration of justice in India. My own experience on the Bench, I regret to say, has confirmed these sentiments. In the U. P. “*such bolo adalat men nahin ho*” (tell the truth you are not in a law court) is a common phrase. I have no doubt that a similar phrase is prevalent in this province and in every other part of India.

“In the estimation of prominent Indian lawyers a large number of witnesses in the courts of this country are prepared to swear falsely. The root of this evil is the futility of the oath which is administered. It means precisely to the vast majority of the inhabitants of this country. The result is that cases are manufactured in civil and criminal courts. Even those who are in the right produce false evidence as they know the other side will do so.

“It appears, therefore, that two things, urgently need be done. The first is to limit the opportunity as far as possible for oral evidence. This can be done by an extension of the Registration Law.”

“Litigation”, he continued “ought further be

reduced by courageous modification of the personal law of Hindus, especially that of the Mitakshara. Transfers by the Kartas of Joint Hindu Family and by Hindu widows create wholesale and interminable litigation and give great opportunities for the introduction of false evidence.

“The second essential for credible evidence is that an oath respected and feared by witnesses should be made compulsory. There ought to be less perjury in India than in any other country in the world. The illiterate villagers who form the great mass of witnesses and the less educated class generally are the very people to whom an oath which they fear is a very real thing, for example, an oath on the Ganges water for Hindus and on the Quran for Muslims would affect a miraculous change.”

If these suggestions were adopted, he said, the declaration contained in *Magnacarta* “to no man will we sell, to no man deny, to no man delay justice or right,” might become a reality in India.

Referring to his colleagues on the Bench, the members of the Bar and the judicial services he concluded :

“I hope it will be said when I retire that in this court we have at least been a happy and contented family.”

As to how far the new Chief Justice cleared arrears,

stamped out corruption, eliminated false evidence, promoted the 'happy' family in the Court, the destinies of which he took over from Sir Shadi Lal, and how generally he translated Magna Carta are matters extraneous to this book. But it can safely be said that not one of the great and distinguished assembly which heard Mr. Justice Douglas Young deliver his first proconsular oration, realised how in a few years people would look back to the era of his predecessor when the High Court stood for the best in the realms of justice and regret that that era had to come to an end on May 7, 1934.

Of the changes in the High Court, the Civil and Military Gazette (May 8, 1934) commented in the following terms ;—

“A momentous change took place in the judicial administration of the Punjab on Monday when the control of the judiciary of this province passed from the hands of the retiring Chief Justice of the Lhore High Court Sir Shadi Lal to those of his successor, Mr. Justice J. D. Young. The retirement of Sir Shadi Lal from the exalted office which he was the first Indian to fill and which he has held for fourteen years has been marked by an unusual number of farewell parties and addresses. The Bar, the Judiciary, the establishment of the High Court and representatives of various sections

of the public combined to do honour to a great Judge and a great Indian. A pleasant aspect of the function held in this connection has been the fact that some of those who, like the leaders of the Rural party of the Punjab Legislature, had been persistent in the criticism of the executive administration in the past, laid aside their grievances and associated themselves with the hearty send off given by the Punjab to Sir Shadi Lal. Nor do one or two minor demonstrations staged by those, who felt aggrieved with the administration of the retiring Chief Justice detract from the success of the splendid entertainments which were a feature of his send off.

That in the course of his fourteen years service as Chief Justice he had been associated with no fewer than thirty-six Judges of the Lahore High Court and that his relations with them had been inspired by unfailing courtesy and consideration was the interesting statement made by Sir Shadi Lal when replying to the toast of his proposed health at a dinner given in his honour by the Judges of the High Court on the eve of his departure.

"Differences of opinion, there are bound to be in a Court which is marked by independence of thought," added Sir Shadi Lal, "but there is no reason why they should be attributed to any cause other than that of viewing things from different angles of vision."

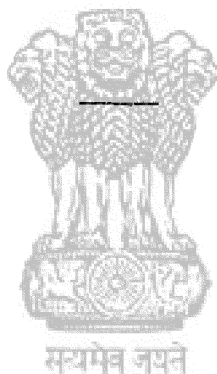
Sir Shadi Lal recalled that the Lahore High Court

was only one year old when he was asked to take charge of it :

"If, by careful nursing it has grown rapidly and covered at such an early age, the distance which divided it from its elder sisters, the credit for the achievement belongs to a large extent to my esteemed colleagues. I sincerely hope that the independent tone of the judicial pronouncements and the high standard of efficiency which have come to be associated with the High Court will be fully maintained and even enhanced hereafter. I feel very happy indeed that I am handing over this promising child to the care of a guardian who will, I am sure jealously watch and protect the interests of the Ward."

Earlier Sir Shadi Lal observed that the task of administering justice in this province had been exceptionally difficult since the Chief Court was raised to the status of a chartered High Court. As stated by the Government of India in their despatch of August 30, 1900, it was considered a great disadvantage to use the Chief Court of the Punjab as vehicle of justice, but whatever justification there might have been for assigning that position to the Chief Court, High Court could not accept that rule, Sir Shadi Lal added that if the various difficulties had been surmounted the result was due in no small measure to the willing co-operation he had received from his colleagues.

Mr. Justice Addison who proposed the toast, said that their regret regarding approaching departure, of Sir Shadi Lal had been lessened by the fact that they realised that his work was not at an end. His elevation to the Privy Council had given a wider sphere for the exercise of his talents in the service of India. They were proud of the distinction he had achieved.



CHAPTER XI

Domestic Affairs

Benjamin Franklin once said that "the use of money is all the advantage there is in having money. For £ 6 a year you may have the use of £ 100 if you are a man of known prudence and honesty. He that spends a groat a day idly, spends £ 6 a year which is the price of using £ 100, for a penny saved is twopence clear, a penny a day is a groat a year."

Benjamin Franklin lived a hundred years before Sir Shadi Lal went to Oxford and it is very probable that Sir Shadi Lal came upon the above dictum and acted upto it all his life for his domestic and private affairs were regulated with the prudence and sagacity that makes some poor men men of ample means, and men of means rich.

Sir Shadi Lal, while still a Judge of the Chief

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Court had become a rich man. For many years at the Bar and on the Bench his income was well in excess of his daily needs. He dressed well but not extravagantly ; he lived modestly ; he had none of the weaknesses that are common to mankind. He was never seen at the races ; he did not entertain with lavishness. Generally speaking Sir Shadilal wasted no money.

Sir Shadi Lal's investments were carefully and methodically chosen. Lahore freeholds were prudent investments giving a good annual return with prospects of capital improvement. He acquired considerable property in the vicinity of the High Court and still has chambers, which yield a good rental. In partnership he built extensive mansions, which bore his name on the Mall Road, and he had valuable property on the Lytton Road, in which he himself resided. Besides this, Sir Shadilal acquired valuable properties in Kashmir, Delhi and Mussoorie.

Soon after his retirement from the office of Chief Justice he liquidated most of his Lahore properties and invested the proceeds in large sugar factories, a course that also proved the wisdom and care expended by him in the management of his private affairs.

The property on the Lytton Road, which housed Sir Shadi Lal as Judge for nearly a quarter of a century, and was the scene of many important functions during his

Chief justiceship is now the permanent home of the Fateh Chand College for Women, its extensive accommodation and grounds being eminently suitable for an educational institution.

The Lakshmi Insurance Co. acquired the Shadilal mansions on the Lahore Mall for the sum of nearly ten lakhs of rupees. These mansions at the time of this transaction were among the best known buildings in the principal thoroughfare of Lahore.

The closing years of Sir Shadi Lal in the High Court marked the beginning of the careers of his children all of whom had been well educated.

Rajindarlal's marriage was celebrated at Bombay and Narendarlal's at Philibhet. Both events were, in view of their father's eminent position, of great social importance and celebrated with outstanding eclat. Important personages, many Judges of the High Court and others constituted the royal contingents of the bridegroom's parties that travelled to Bombay and the United Provinces to bring home the brides.

The marriage of the daughters of Sir Shadi Lal were celebrated with equal pomp and ample dowries were given to them by their father. His Excellency the Governor and Members of the Government, Judges of the High Court and important personages of all walks of life were proud to be present on these occasions.

Having celebrated the marriages of his children,

which is the fond and pious hope of every Hindu father and having successfully launched them on their own careers, backed by a father's wisdom and generosity, and having concluded his work as Chief Justice of the Punjab and the first Judge of the High Court, Sir Shadi Lal left for England to assume office as Member of His Majesty's most Hon'ble Privy Council. The departure from Lahore, the centre of over thirty years of labour, great achievements, and many friendships was a sad affair. As the train moved out, taking Sir Shadi Lal to his new mission, many were visibly moved.

CHAPTER XII

The Privy Council

For the first time in 1906 an Indian was associated with the Judicial Committee of the Privy Council. Mr. Justice Syed Ameer Ali, then a Judge of the Calcutta High Court, was nominated to be India's first Privy Councillor. A nomination to a seat on the Judicial Committee implies *a fortiori* the highest legal attainments and qualifications. To sit upon the tribunal, whose pronouncements have the force of law in all Courts of the British Dominions, is the highest honour to which any member of the legal profession can aspire. The Board comprises the Lord Chancellor, the Lords of Appeal, ex-Lord Chancellors and those who have held high judicial offices in the Dominions and in India. In company, such as this it takes no mean talent to shine.

The Rt. Hon'ble Syed Ameer Ali was succeeded in

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1926, after having held the office with distinction for twenty years, by Lord Sinha, on his retirement from the Governorship of Bihar and Orissa. Lord Sinha had, of course, not held any previous judicial office, but had for many years been Advocate General of Bengal and commanded perhaps the most lucrative practice of his day. Lord Sinha was succeeded two years later by Sir Binode Mitter, who had also acted as Advocate General of Bengal. In 1931 Sir Dinshaw Mulla, whose name is familiar to every lawyer in India, was appointed a member of the Judicial Committee and held office till 1933.

In 1934 Sir Shadi Lal followed in the line of these illustrious predecessors.

On May 11, 1934 soon after handing over charge as Chief Justice of the Lahore High Court, Sir Shadi Lal sailed from Bombay and arrived in London about the end of the month. Till his retirement four years later, Sir Shadi Lal resided in a flat at Queen Anne's Mansions, which overlook Green Park and are conveniently situated for attendance at the Privy Council.

In the Reports from 1934 to 1938 there are to be found a very large number of decisions of the Board, some of the very greatest importance, written by Sir Shadi Lal. It is impossible in a book, which is not intended to be commentary, to adequately represent or discuss the considerable volume of Judge-made law (as

it is termed) emanating from decisions of their Lordships of the Privy Council during this period. A few cases by reason of their general importance may however be referred to.

In *Atma Ram Abhimanji vs. Baji Rao Janrao*, (62 I. A. 139) a case from the Central Provinces, the Judicial Committee was called upon to determine the exact scope of the expression "Samanodake" as used in the Hindu Law of inheritance. The case came before five members of the Judicial Committee, Lords Tomlin, Thankerton, Russell of Killowen, Sir Lancelot Sanderson and Sir Shadi Lal. The High Court of Bombay had interpreted the word to include all agnates without any limit of degree, following a rule sanctioned by Nilkantha, the author of *Vyavahara Mayakha*, whose authority is recognised in Gujrat. This view had also influenced a decision of the Allahabad High Court. These views had, however, been dissented from by the Madras High Court. Upon an examination of all the available texts of the Hindu Law, Sir Shadilal, on behalf of their Lordships, held that according to the Mitakshara school of the Hindu Law, which governed the case, the terms 'Samanodaka' included only those agnates, whose relationship to the deceased extends from the 8th to the 14th degree, and in the absence of such an agnate, the estate devolves upon his bandhus.

The Judicial committee in *Ramakrishan Ayyer vs. Panameshwara Ayyer* (1935 P. C. 92) a case from

Madras, where an improvident Hindu youngman had assigned his share in the joint family property in favour of his father-in-law for a nominal consideration and the transfer was not intended to deprive him of his property but to save it from his creditors, held that the assignment did not extinguish his interest in the estate and that it was no bar to a suit for partition of the property.

Sir Shadilal also wrote other judgments of the Privy Council involving important questions of Hindu Law. In an appeal from the Allahabad High Court (62 I. A. 47) Lords Atkin, Alness and Sir Shadi Lal declared that in the case of a religious endowment, the person managing the affairs of the religious institution and treated as Mahant by all persons, is entitled to recover for the benefit of the Mutt, such property of the Mutt as belonged to it and held by trespassers.

Sir Shadilal must be credited with having written equally interesting judgments on other branches of the law as came before the Privy Council. One Shiv Narain Joga an advocate of the High Court of Judicature at Allahabad appealed to the Privy Council in 1936 against an order of that Court suspending him for misconduct on the ground of having accepted a promissory note in part payment of his fees and in including this part of the fee in the certificate for purposes of taxation of costs under the belief that the execution of the promissory note was tantamount to actual payment.

Their Lordships in setting aside the decision of the Allahabad High Court held that the Advocate was not guilty of misconduct as the acceptance of a promissory note was not illegal, in view of the fact that the Indian Law does not now require a legal practitioner to receive the whole of his fee before the hearing of the case (*Shiv Narain Joga vs. Judges of the High Court of Allahabad* 58 All. 307 P. C.)

In *Gopi Krishan Kasaidhar vs. Mst. Jaggo* the Judicial Committee held that the *Shastras* dealing with Hindu Law of marriage do not contain any injunction forbidding marriages between persons belonging to different divisions of the same caste, and the fact that such marriages did not originally take place does not imply that such a marriage is interdicted and would if performed be declared to be invalid (63 I. A. 295).

Though Sir Shadilal did not actually write the judgment, he was party to the hearing of one of the most important criminal cases ever to go before the Board from India. In *Nazir Ahmed vs. The Emperor*, the Judicial Committee was called on to consider how far a confession made to a Magistrate outside the four corners of Sections 164 and 364 of the Criminal Procedure Code was legal. Nazir Ahmed was tried under section 396 Indian Penal Code for dacoity with murder and convicted mainly on the strength of a confession alleged to have been so made to a Magistrate. His

conviction and sentence of death had been upheld by the Lahore High Court Lord Roche, Sir John Wallis, Sir Lancelot Sanderson, Sir Shadilal and Sir George Rankin sat to consider the question. The case was argued for the appellant by Mr. C. Sidney Smith and for the Crown by Mr. Dunne, K. C. and Mr. Wallach. K. C. Lord Roche, who wrote the judgment for their Lordships, in setting aside the conviction, laid down in clear language that where a power is given to do a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden (63 I. A. 372).

In the following year, a case of the very highest importance came from Allahabad before the Board involving again a very difficult question of Hindu Law. Lord Maugham, Sir Shadilal and Sir George Rankin considered the question of the meaning and limits of ancestral property in reference to the joint Hindu family coparcenary. After referring to the original Sanskrit texts, Sir Shadilal, held that the term "ancestor," in its ordinary meaning, includes an ascendant in the maternal as well as the paternal line, but the 'ancestral' estate, in which, under the Hindu Law, a son acquires with his father an interest by birth, must be confined, as shown by the original texts of the *Mitakshara*, to the the property descending to the father from the male ancestor in the male line. Hence the estate, which is inherited by a father from his maternal

grandfather, cannot be held to be ancestral property in which his son has an interest jointly with him (Muhammad Hussain Khan *vs.* Babu Kishna Nanda Sahai (64 I. A. 250).

These judgments will give some indication of the class of cases in which it was generally left to Sir Shadilal to elucidate the law in regard to the advice to be rendered by their Lordships of the Privy Council to the Sovereign. These decisions not only won approbation in India but evoked admiration among his colleagues. Lord Tomlin described the judgment in *Atma Ram Baji Rao* (*supra*), in which the limits of the 'Samandoka' were considered, as a 'model judgment' and Lord Maugham, Lord Chancellor concurred in a dicta of Sir Shadilal with the remarks "I admire and agree."

Sir Shadilal's career at the Privy Council was, however, cut short, by ill health. Even at Lahore, while Chief Justice, he suffered for many years with a malignant attack of neuritis. The rigors of the English climate did not improve matters. Though Sir Shadilal was able during his five years at the Judicial Committee to visit India several times, his health steadily declined and the disease expanded to such limits as made it imperative for him to leave England for good.

From Delhi, on November 15, 1938, Sir Shadilal sent Lord Maugham the resignation of his seat on the Judicial Committee. Sir Shadilal begged relief in the following terms :

"As you have been already informed I have been suffering from ill-health since my return to India. Even a long stay in the hills has not produced any improvement.

"My medical adviser is of opinion that while I am not yet fitted to undertake a voyage to England and to resume my duties on the Judicial Committee, I should be able to do so later if I obtained leave.

"I do not, however, think that there should be any further delay in informing you that as my health will not enable me to bear the trying climate of London in the winter. I must tender resignation of my seat on the Judicial Committee of the Privy Council.

"I like my Judicial work and it is with regret that I have to give it up. Moreover, I have the appreciation of uniform courtesy and kindness, which I have received from my colleagues and I shall be very sorry to part from them."

The news of the resignation was widely regretted and nowhere more than among Sir Shadilal's quondam colleagues. Lord Maugham replied to the letter in the following terms :

"My dear Sir Shadi,

I have read with much regret your letter of the 15th November though as you know I was in the circumstances prepared for it. In company with all your colleagues I shall greatly miss you from the

deliberations of the Judicial Committee where your great knowledge of the laws of India, your zeal for the administration of justice and your courteous intercourse with those sitting with you will long be remembered.

At the same time, I fully understand the reasons which, after your courageous struggle against the rigours of the English climate, have now compelled you to withdraw; and I appreciate highly the sense of public duty which prompted you now to tender your resignation.

In conclusion while I am sorry that I have had no opportunity of expressing to you personally my feelings on this occasion I desire as warmly as is possible in a written communication to wish you long life and happiness in your native land and to express the hope that you will have happy memories of your association with my colleagues and myself.

Sir George Rankin wrote in the following strain :

"I was sorry to learn of your final decision and to know that our short period as colleagues was at an end. I know I have not always been the most wise and considerate of colleagues, but you have always been most helpful and friendly to me and I shall miss you. I look forward to seeing you from time to time when you visit this country

on holiday. Who knows ? After a time of leisure you may be back again at the Board as a volunteer from time to time."

Lord Alness wrote :

"This is indeed bad news. I regret very much that I shall be deprived of your invaluable and kindly aid in the Indian Division and I regret even more the reason which has compelled you to resign. I shall always look back with pleasure and with gratitude to my association with you ; and I can only hope that with greater freedom and less responsibility your health may be re-established."

Warm tribute also came from other colleagues on the Board. Lord Wright writing on behalf of himself and his colleague wrote :

"I join with all my colleagues here in regretting that health should be the reason of your finding it impossible to continue your work in London, but I have no doubt that you have made a wise decision although it deprives us of your much valued help.

I am happy to know that you have carried away with your pleasant memories of your association with us in the work of the Judicial Committee of the Privy Council the most interesting Court in the world ! It will not be easy to fill your place."

Lord Russell of Killowen sent the following letter on learning of Sir Shadi Lal's decision to resign his seat on the Board :—

"We were all filled with regret at the news of your resignation not merely because of the ill-health which was the cause caused but because of the loss of you as a colleague. It is pleasing to think that your memories of our association are as good to recall as are my own ; and I can only hope that in the kinder climate of India your health will be so restored as to enable you to enjoy you leisure to the full."

In the words of Lord Romer :

"We miss you sadly on the Board, but we realise that in the interest of your health your resignation was inevitable. For myself I have much to thank you for in the patience with which you initiated me into the intricacies of Hindu Law."

Lord Thankerton also wrote letter regretting Sir Shadilal's resignation.

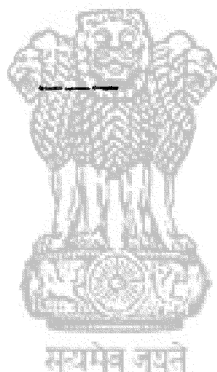
On the receipt of the portrait of Sir Shadilal selected for the Privy Council, Mr. Colin Smith, Registrar addressed the following letter :

"I write to report your picture was duly delivered yesterday by Mr. Rashid and will be hung in

the second Court of the Judicial Committee with a suitable inscription affixed.

From this position of eminence you will be able, pictorially, to keep an eye for all time upon the judicial activities of the Board !

On their Lordships behalf and my own I have to thank you for your gracious gift."



CHAPTER XIII

A Retrospect

A great judge, no less than a great statesman, leaves "footprints upon the sands of times" The Rt. Hon'ble Sir Shadilal, as he is now, in quiet, dignified and honoured retirement, can look back with much satisfaction to many achievements conspicuous and outstanding among his contemporaries. To future generations of lawyers in India in general and in Punjab in particular, his career will always be an inspiration, the convincing answer that diligence, hardwork, and honesty yield excellent dividends. To the judges, who have succeeded him and will succeed him, his judgments and pronouncements will be precepts of the highest value. His manner in Court, the courtesy that he extended to members of the bar and the integrity he insisted upon in the affairs of the Court will be used

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as a standard by which the achievements of his successors will be measured. Even those, who had some grievances with Sir Shadilal admit the excellence of his work and the high esteem and credit enjoyed by the High Court during the years of his custodianship of the office of the Chief Justice.

In many ways, Sir Shadilal's success at the Bar, on the Bench and finally as Chief Justice represented and the symbolised the important social and intellectual revolution, which had been in process in India for a hundred years. Macaulay and the Directors of the East India Company contemplated that the introduction of the English language and culture to the Indian people would result in the growth of a vast semi-educated, semi-cultured babuocracy. Who could have anticipated in their time, that the result would be the birth of an intellectual aristocracy, which would find expression of its ability in the language of its masters, which would in almost every sphere of activity establish the genius of the Indian race and the virility of its national life. Burke and Warren Hasting, Clive and Elphinstone would literally turn in their graves, if they saw the revolution that has taken place in India since their day.

The revolution, here referred to, is not the revolution born of the bomb factories, the secret conclave of conspirators or of fire, violence or guerrilla warfare. But judged by the essential test of all revolutions, namely, the transformation from one set of conditions to a new set

of conditions, it is a revolution both momentous and far reaching in character. Its magnitude is incapable of precise computation ; it is the silent revolution of time, the confusion of the resistless forces of the age.

Startling and somewhat contradictory as this may appear a careful scrutiny of recent innovations and evolution of manners and of thought both in the West as in the East, will reveal that the processes of revolution and transformation have been hard at work. For all the philosophy of the nonchangers, and the warnings of the learned but narrow Bishop Inge, the great revolution continues to progress and may in time fulfil the oracles of racial destiny.

A stroll in any bazar, not necessarily an Indian bazar (it may be a bazar of Baghdad or Cairo or Peiping or Constantinople) the occidentalisation of the East will be observed. Almost every shop will bear a sign-board inscribed in some European language ; there will be banks, post offices and general stores for the sale of miscellaneous items of modern diet. The cult of the straw hat is spreading to the porters at railway stations and peripatetic hawkers. The average Indian young man of whatever education is perhaps the smartest dressed man in the world. His coats are the latest in tailoring, and with his trouser creases you could have the proverbial shave. Among Eastern women, the growing influence of western fashion is equally noticeable. The high heel shoe often observable beneath *burquo* or *sari* is, indistinguishable

in costume from any chic customer of the Rue de la Paix.

In social habits, tendencies are no less obvious. Some years ago, not, however, beyond the range of living memory, the average Englishman and the American ate wholesome food, mutton chop, beef-steak and Yorkshire pudding. In every country of Europe and the New World of the States, the plain food of the past is now replaced by more palatable but less digestive fare borrowed from the East. Chinese restaurants with noodles and chop-sticks are popular and fashionable, coffee is Turkish and curry and rice for breakfast is a habit with many. One might almost say that the recipes for such honest British food, as built a proud empire, are now confined to the Khansamas of the Dak bungalows. In these splendid relics (almost protected monuments) of post-Olive antiquity, one often sees the memsahibs from "home" cursing the gravy of an indestructable chicken, while the head-clerk of the local District Magistrate goes bravely ahead with knife and fork rejoicing in his new found culture.

To turn to the more elevated realm of thought and national life, we find equally emphatic signs of the forces at work. The Persian wheel is replaced by tube-wells, the charkha by spinning and weaving mills, and machinery is generally doing manifold more labour than was possible by methods of labour common to our ancestors. To the growth of science, India has made substantial contribution. Armies and navies tramp across the

continent of Asia inspired with the message of the greater Asia. Turkey threw off the cloak of Eastern ways and routed the aggression of Europe, while Abdul Karim long held at bay two the strongest military powers of Europe. In all these events, whatever the pursuit, the challenge of Asia is not in terms of its ancient and ageless standards, but by the standards of the modern age, standards fixed in Berlin, London and Paris.

In the West on the other hand one observes a new movement for return to simplicity, while in the East there is the equally if not more important tide flowing in the opposite direction. The East is moving from individualism to democracy and from religion to to democracy. Drift of the West is from democracy to individualism and totalitarianism. We have, accordingly, the growth and manifestation of collective consciousness among the peoples of the East, the abolition of the Caliphate, the deposition of Sultans and Tunchens and rejection of vested hierarcies, the establishment of administrations more or less representative of the national will. Russia for reasons peculiar to her own history, has jumped the intermediate stage in political evolution and gone straight from the autocracy of the Tzars to an autocracy of the proletariat. Many Western thinkers agree that Gandhi's concept of society is the ultimate goal—the return to the individual as the economic unit. In the West of materialism, Gandhi would have been a saviour ; he has failed in India

because materialism appears to be the life blood of Asiatic regeneration.

The mutual contact of East and West, pushed closer by new facilities of communication are responsible for a better understanding of their respective cultures and view points. The East is relearning the value of a progressive nationhood through its women and the emancipation of women is one of the major tendencies of the age.

But as we said at the outset, Burke and Warren Hastings, Clive and Elphinstone, Lawrence and Macaulay would start at the achievements of modern India. Orators equal to Burke have been heard in India through Surendra Nath Bannerjee and Srinavasa Sastri; poetry both lyrical and melodious, without equal in the whole range of English literature, we have from Sarojini Naidu; mathematics in its highest flights has come from Ramunajam; science and invention have appeared in the genius of Bose, P. C. Roy, Raman and many others. There have been wizards of finance and industry, great philanthropists, great teachers, great linguists and great philosophers. In the last half century of Indian History few races can boast of so varied a harvest and such marked progress.

These supermen—if we may so call them—have hailed from all parts of the country. To no one province is the credit entirely due, It is a matter of

pride and gratification that in the contribution to national regeneration, Punjab has had no mean and lowly share.

Whatever may have been the differences—acute and sharp though they were at most times—to Sir Fazl-i-Hussain must go the credit of some of the most brilliant political achievements in the range of Indian politics. He did not have the following or popularity of the Nehrus, or command the universal admiration of Das, and was never in the same street as the Mahatma of Sabarmati, but he was at heart a patriot and for sheer political dexterity had never his equal. Whether in the Punjab Government or in the Government of India, or in retirement, in health or in illness, during the last fifteen years of his life, he was a force all parties had to reckon with and none more so than the bureaucracy.

To Lala Lajpat Rai must go the credit of very spectacular successes in the national struggle for freedom.

He was the only Punjabi to occupy the Presidential Chair of the Indian National Congress, although it was not Lala Lajpat Rai who introduced the Congress to the Punjab. The deportation of Lala Lajpat Rai to Burma in the first decade of the present century made him a popular hero, a character he successfully maintained upto the time of his death in 1928, when he

sustained fatal injuries at the hands of a police inspector. He was a great and popular hero, a fine orator and a master tactician. Without in any way disparaging his achievements, however, it may be said that, history does not rank him with Dadabhoy Naroji, Pherozeshah Mehta, Gokhale or Tilak, who laid distinct imprints on the fortunes and political life of their times. Lala Lajpat Rai was, however greater in one respect than any Indian of his time and that was in respect of his keen political intuition. He never lost a battle, because he always knew well ahead which side would win. He was always in the right, and therefore with the winning party. This gift, if it sometimes amazed his most intimate friends, ensured the continuity of his popularity if not the continuity of his professions. He was essentially the man of the crowd. He went with the crowd right or wrong. By being always in the right, he gained immense prestige and power. During his lifetime he was a force to be reckoned with.

Besides and in contrast with Sir Fazl-i-Hussain and Lala Lajpat Rai, among those who contributed greatly to the regeneration of Punjab was Sir Ganga Ram. He was no orator and he did not meddle in politics. He had spent the best part of his life as a servant of the Crown, with no more credit, than that of an excellently mediocre career. His greatest achievements, however, appeared in the last twenty years of his life. Overnight he became a Croesus; his name became

associated with fabulous wealth, made out of the arid wastes of the Punjab ; his benefactions brought relief to the sick, the aged, the orphan and the widow.

In so far as industrialisation and the organisation of capital is concerned, Lala Harkishenlal contributed no small share to the development of modern industry in India.

Side by side with politics, agriculture and industry, Punjab in yet another sphere of national activity proved its virility and its capacity. The Chief Justice symbolised the capacity of the Indian people in the most subtle and difficult of vocations, the profession of the law. Sir Shadilal was no mob orator, but he had a popularity that any man would envy ; he was no croesus, but had amassed a private fortune by frugal living and wise investment, which put him among the richest in the land ; he was no politician, but in dexterity, he was a match for them all. His career had been one long triumphant progress, ever since he entered as a boy for the Matriculation Examination. The ease with which he had won prizes and scholarships as a youngman was equalled with the ease with which he won the bigger and more valuable prizes of after life.

To these men must go the credit of the new age we enjoy, and for establishing the credit for Indian ability, industry and integrity, that has contributed to the rise in the importance of India among the great

nations of the modern world. When the history of modern India comes to be written, no small place will be occupied by the small man, who presided over a great Court for many years and added to the prestige of the Court ; who wrote judgments that would have done credit to Eldon and Brougham, who sat with Lord Chancellors and won their admiration, whose conduct as a Judge has made it possible for others of his countrymen to be entrusted with great office, and who proved with success, the then unique experiment for an Indian to be appointed a Permanent Chief Justice.



THE END

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