FOREWORD

Since I became The Master of the Rolls—nearly twenty years ago—I have come to know the value of history. Not only for the interest we all have in our forefathers, but also for the very content of it. It tells us how men behaved in times past. It shows us their mistakes. It teaches us what to do—or not to do—in our time.

In England we have records in profusion—especially of our Courts of Justice. Every detail of every important case for the last 700 years is to be found somewhere or other. They have been ransacked by legal historians.

But take the great sub-continent of India—take the vast area ruled by the East India Company—for well over 100 years. It built roads, bridges and canals and, perhaps above all, it established a system of justice for millions of its inhabitants. This system was unique for the judges, even in the highest of its courts—the Sadar Courts—were laymen without formal legal training or experience. That distinguished author Dr. M.P. Jain, has, in his "Outlines of Indian Legal History" given us a clear overall picture of the two systems of judicial administration—the King's Courts in the presidency towns, and the Company's Courts beyond those limits—which came into being in India in the 19th century. What Sir Orby Mootham has done in this book is to examine in detail the working of the Sadar Courts in the early part of that century. These years saw the replacement of the Governor and members of Council as judges of the Sadar Courts by servants of the Company who were not members of the Government, and so paved the way for the independence of the Company's judiciary. It is an interesting and important period in Indo-British legal history. The records of the period are, in the main, hidden away in the archives of that marvellous depository—the India Office Library and Records—still in London.

Sir Orby Mootham has done an immense task of research. It has been a labour of love, I am sure. When Lady Denning and I first went to India in 1958 he was the Chief Justice of Allahabad. We stayed with him and his wife in their delightful house. There he was—with his fellow-judges—coping with the heaviest case-load of any Court in India—and that probably means the heaviest case-load the world over. His judicial qualities earned him the highest esteem. But now his historical qualities can be well seen.

Sir Orby tells us how Lord Wellesley urged upon the Directors the need to separate the judicial from the administrative functions of government, and of the luke-warm reception this recommendation received. Lord Wellesley's Minute of the 12th March, 1801, is set out in an appendix. It shows the wisdom and perspicacity of the Governor General. The story goes on to tell us of the judges and of how, although they were servants of

the Company, they sought to administer justice without fear or favour. He writes of the great Henry Colebrooke, judge and Sanscrit scholar, of Courtney Smith (the brother of Sydney Smith, the well-known wit) in Calcutta, and of his constant differences with the government; of Scott and Greenway in Madras, who were removed from office by the Directors of the Company because they "displayed a bias in favour of the accused". He tells, too, of Bombay and of the conflict between Sir Peter Grant of the Supreme Court and the Sadar Court Judges who were—in the former's words—"not bred in any study of the law".

In this book Sir Orby has traced the history of each of the Sadar Courts and the way they were conducted and run—of their practice and procedure—of their judges. It is well that we should have this record—of the men of those days, who sought to bring peace, order and justice to a disorganised and troubled country. They helped to make it into the great Indian Empire—as it was known when I was young. Members of my family have served India for many years. So have many other families. Now that the page is turned we can look back with some pride at what our forefathers did there. But looking back means research into the archives. That is what Sir Orby has done: and he has done it magnificently. It is of great present value: and will continue to be so for many years to come.

DENNING

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