

Some English Judges whom I Admired

By SRI S. P. SINHA

Senior Advocate, Supreme Court and Ex-Judge, High Court, Allahabad

The struggle for freedom, miscalled the Mutiny of 1857, failed for lack of unity of purpose and unity of command, for the utter lack of patriotism displayed by the Indian princes and the whole of the Punjab. Lord Canning described the States as breakwaters. How shall we describe the Punjab? But, it was enough to shake the Empire to its very foundations. The Crown realised its responsibility and assumed direct control of the administration. England felt that the memories of Havlock, Hudson, Neill, Nicholson and so many others should be obliterated. They had, by their misdeeds, shamed even Nero and Caligula. She also felt that the policy of the mailed fist initiated by Warren Hastings and pursued by Wellesley, Moira and Dalhousie, the author of the infamous doctrine of lapse, should be replaced by a policy of the Velvet glove.

"Old Order Changeth Yielding Place to New."

Canning himself was the first in the new order. Barring one or two exceptions, like Lytton and Curzon, the line was unbroken. England was anxious that the best products of Oxford and Cambridge should be sent to this country; men to whom:

"India was not merely a land of regrets and rupees, but a land of duty written in five letters instead of in four."

SIR ROBERT AIKMAN

Robert Smith Aikman was one such product. He arrived in India on October 22, 1867 and was posted to Agra as Assistant Magistrate and Collector. Promotions those days were slow and followed a strict test of experience and merit. It was only on March 20, 1886, that this young man of unusual merit was first appointed as District and Sessions Judge, Aligarh, which was then a great educational centre. The M. A. O. College, Aligarh was presided over by Principal Beck, a young man of about thirty-two, endowed with talents of the highest order. It is also remarkable that the constitution of the college had been drafted by a young barrister of twenty two, Syed Mahmood, later the famous Justice Mahmood.

He served as a District and Sessions Judge for fourteen years, at several places, but all in the Agra Division, till he officiated for Mr. Justice Mahmood in November, 1892. On the permanent appointment of Sir P. C. Banerji, he had to revert as District and Sessions Judge, Bareilly, but after a few weeks, he joined the High Court permanently in place of Mr. Justice Tyrrell.

In the High Court he was an outstanding success. That eminent criminal lawyer, with an equal command of law and letters, the author of India under the British Crown, has described Justice Aikman in these terms:

"The patience that he displayed on the Bench was remarkable and he had the rare faculty of cutting short long winded arguments by some short observations whose quiet humour was appreciated".

He was equally at home both on the Criminal and the Civil sides. Mr. Manmohan Ghosh, the eminent Calcutta Barrister, appeared before him in the well-known case of Hanumant Prasad of Azamgarh. He formed a very high opinion of him and said that it was a pleasure to appear before such "an intelligent, painstaking and courteous Judge". His judgment in *Queen Empress versus Mannu*, I. L. R. 19 All. 390 (F. B.), in which he slightly differed, in a very material particular, from Sir John Edge, is a measure of his understanding and sympathy. He says at p. 417:

"It requires no argument to show that if a witness who is giving evidence against an accused person is proved to have made statements *differing materially* from the evidence he gives in Court, the value of the testimony is seriously impaired, for it is clear that either he or his memory is not to be trusted." The italics are mine.

The number of cases decided by him must be legion, but I propose to notice one case, which in one form or another has, over the years, been noticed by all the Courts in India, viz. *Balkishan Das versus Legge* (I. L. R. 19 All. 434).

The question still arises whether a certain transaction is a mortgage by conditional sale, or a sale with a clause for repurchase. The parties were represented by all that was best at Allahabad and Lucknow. Mr. Conlan, Mr. Colvin, Mr. D. N. Banerji and Mr. Madho Prasad appeared for the appellants; Mr. De Gruyther, Mr. Chamiar and Mr. G. P. Boys for the respondents. At the end of the argument, which lasted for several days before Mr. Justice Banerji and Mr. Justice Aikman, the leader of the Lucknow Bar paid a high compliment to the members of the Bench. The Privy Council affirmed the decision-27 I.A. 58. Mr. De Gruyther himself won fresh laurels in the Privy Council.

Mr. Justice Aikman was singularly free from racial prejudice. The case of *Emperor versus Hoffman* bears ample testimony to it. Hoffman, a European was charged with wrongful confinement of a Marwari lady at the Kanpur Railway Station. The Jury returned a verdict of not guilty. His Lordship refused to accept the verdict and openly said he dissented from it.

It is not surprising that the Bar, on his retirement in 1909, gave him a farewell which, for its warmth and sincerity, has hardly been equalled, never surpassed. Mr. C. C. Dillon and Mr. J. N. Chaudhri paid him rich tributes. The compliment paid by Mr. Chaudhri himself a great master of English language, was so unique that a few words will bear repetition:

"It is our duty to express our sense not only of your conspicuous ability, learning, patience and assiduity. . . There never was a Judge who was more deeply imbued with a more earnest desire to do justice between man and man and who better succeeded in inspiring confidence in the public mind".

The Bar presented him a silver casket on which were inscribed the following Urdu lines composed by the famous poet Akbar, who had once served under Justice Aikman as a Small Cause Court Judge.

URDU LINES

"Thy justice, Aikman has won-Many a heart, not one"

Presiding, in the unavoidable absence, owing to sudden illness of the viceroy, Lord Lansdowne, over the memorial meeting to mourn the death of Theodore Beck, Sir Arthur Strachey referred to the deceased in these terms:

"He was one of the few Englishmen whom England sent to the country as messengers of goodwill, to interpret the high and noble purpose of the empire".

I used to hear many anecdotes about him from my father and his friends. I shall mention only one, because it represents the highest water-mark of an unruffled temper and almost divine patience and dignity.

There was a barrister who did not exercise much discretion or judgment in the selection of appeals he filed. He stood up to argue a second appeal and, for want of any point worth arguing, he argued:

"My Lord, the judgment of the Court is unintelligible".

Justice Aikman: "No, the judgment is quite intelligent to me".

Counsel : "Your Lordship must be an extraordinary man".

Judge: "No, I am a very ordinary man".

Counsel: "No my Lord, you must be a very extraordinary man".

After that, the Judge kept quiet and the arguments continued uninterrupted.

I know of no parallel to such nobility of character. Sir Robert Aikman belonged to the class of I. C. S. officers, who lived for the people, moved amongst the people and had their being with the people of this country. He has left a memory which is still treasured by us. It is of such man that the poet has said:

"A gentleman I'll be sworn thou art,

Thy form, thy face, actions, tongue and spirit

Do give thee five-fold blazon".

SIR JOHN STANLEY

Sir John Stanley came to India as a Puisne Judge of the Calcutta High Court in 1898 ; and on the death of Sir Arthur Strachey he was appointed Chief Justice of the Allahabad High Court. He assumed charge on August 17, 1901. The Calcutta Weekly Notes, then at its zenith, wrote of him in very complimentary terms and he brought to this Court a high reputation for ability and industry. Stanleys are well-known names in England. Members of his family held high offices under the Crown, at home and in different parts of the Empire. Sir John Stanley throughout his career as Chief Justice maintained the high traditions of his family.

His judgments show a thorough grasp of legal principles, wide experience, the saving grace of common-sense and a comprehensive view of human life. He was the master of a style simple, elegant and with an easy flow of words. Almost throughout his tenure, His Lordship sat on the Civil side, in heavy first appeals. He spared neither himself nor others; and quite naturally he made a substantial contribution to the case-law on a variety of subjects. I shall notice one or two of his decisions which have left a permanent impress upon the case-law.

The terms-'A Hindu son', 'vested right in the family property' and 'the Hindu coparcenary' -sounded as anachronism. to some of us even then. But, the Hindu son found in His Lordship a genuine friend and a warm advocate.

Sir John Stanley's intelligence and shrewd common-sense enabled him to get at the truth. In a case, which was a *locus classicus*, Maharaj Singh *versus* Raja Balwant Singh (1906 A. L. J. R. 274), he delivered a remarkable judgment. The suit was brought by the transferee of a mortgagee.

The mortgage in suit was executed in lieu of earlier debts incurred by the father. His Lordship's judgment on the question of burden of proof is truly remarkable. Says he-

(a) No necessity for the expenditure of the moneys, which the income of the estate could not satisfy, is suggested, other than that, which might arise out of a dissolute and extravagant mode of life.

(b) Now that a large part of the money borrowed by Raja Shankar Singh, was borrowed for immoral purposes, there can be no doubt. His income was more than ample to meet his ordinary requirements, and in addition to that, he had the large accumulations amassed by his father.

(c) Experience tells us that his licentious mode of life was not and could not be concealed from his neighbours. It was no doubt the common talk of the *bazar*. No intending lender could fail to have learnt of it, if he had made any enquiry whatever.

(d) The facility with which Hindu fathers can obtain loans from money-lenders has proved disastrous to many respectable and well to-do families in these provinces".

This reads like a page from some old text-book writer who had entered into the spirit of the Hindu law. It is not surprising that His Lordship, as the scion of a distinguished family, held this view. It reminds me of a few lines in one of Shakespear's plays:

"My Lord of Norfolk! Since you are truly noble

As you respect the estate of the Despised nobility."

His Lordship had a high sense of morality and we would not grant the husband a decree for restitution of conjugal rights if he had made a wanton and unfounded attack on the character of the wife.

To quote His Lordships:

"We find him in the plaint itself heaping the vilest insults upon her. He charges her with immorality and adultery. In view of her parentage, position and fortune the charge, if untrue, is sheer cruelty. (1907) 4 A. L. J. R. 60, at p. 65.

Like Sir Robert Aikman, Sir John Stanley was also singularly free from racial prejudice. A case from Jhansi was typical of its kind and illustrates His Lordship's exalted character. One Rahim Baksh, a building contractor, did some work for the Government and had not been paid his dues despite repeated demands. One day, with more zeal than discretion, he approached the Engineer, Mr. Rice, and pressed his demand. This was too much for Mr. Rice. He not only scolded the contractor, but freely used his cane. Rahim Baksh brought an action for damages on account of the beating. Among the pleas raised by the Engineer in his defence was that what was done had been done in the discharge of his duty. The suit was dismissed by the Courts below. The second appeal came up for hearing before Sir John Stanley. His Lordship summoned Mr. Rice and plainly told him "It was no part of your duty to use your cane and beat the man". He acted as Chief Justice for ten years and, very naturally, men's memories were full of his acts of kindness. Sir John Stanley retired in 1911, but he was long remembered for his many acts of kindness. We owe the present building of the High Court mainly to his efforts. He died not long after.

"But to live in hearts you leave behind, Is not to die".

SIR THEODORE PIGGOTT

Mr. Justice Piggott came to India in 1888. He was born at Padua, in Italy, on October 26, 1867 and was educated, first at Kingswood School, Bath, and then at Christ Church, Oxford, from where he took his degree with distinction in 1888. He joined the service on August 28, 1888, as Assistant Commissioner, Allahabad. From here he went to Jhansi, in the same capacity. In April, 1890, he was made an Assistant Magistrate and Collector and worked in that capacity in Mirzapur, Ghazipur, Ballia, Bulandshahr and Budaun. He was there made a Joint Magistrate in November, 1893. After six years of service on the executive side, he went to Aligarh as Additional Judge. The M. A. O. College, Aligarh, at that time, in the words of Sir Tej Bahadur Sapru, "was particularly lucky in the brilliant combination of its professors. Theodore Beck was the Principal of the College and there were men like Sir Theodore Morrison, Professor Wallace, Theodore Arnold and the distinguished Shakesperean, Professor Raleigh". Among the students was that prince of scholars, Satish Chandra Banerji, who had few equals in the country, none to surpass him. The subject of this sketch was a man of a scholarly disposition. I have no doubt the advent of the fourth Theodore must have enriched the intellectuallife of Aligarh. After that, Mr. Justice Piggott, barring a short interval, always worked on the judicial side at Budaun, Saharanpur, Moradabad and Gonda.

He had made his mark as one of the best Judges in the Province and was appointed officiating Judicial Commissioner, Lucknow, in 1908. He was confirmed in 1909. He officiated in the High Court in 1910, 1911 and 1912. He came here permanently in place of Sir Harry Griffin in June, 1914 and retired in April, 1925.

Once I went to the house of Sir Theodore Piggott. As soon as I reached there, I was ushered to the drawing room where he was sitting with a few Indian raises. He was talking to them in very good and fluent Urdu. He very warmly shook hands with me. One of the persons present put to His Lordship, what was a matter of common knowledge, if it was a fact that he had superseded some men in his service. He was modest almost to a fault and very nearly blushed when he said "I do not know why, but the Government was somehow partial to me".

His Lordship was the master of an inimitable style, which was both scholarly and homely. It had, sometimes, a romantic touch. Of these, I the best illustration is the case of Budha Singh *versus* Laltu Singh (I. L. R. 34 Allahabad 663), when, sitting with Sir P. C. Banerji, he had to decide one of the subtlest and most difficult questions under the Hindu law. Who under the Banaras School of Hindu Law, had a preferential claim?- the great grandson of the grand-father, or the grandson of the great grand-father. The answer depended upon the interpretation of the words *Putra* and *Santana* in the Mitakshara. It was a most perplexing problem. Eminent authors, ancient and modern, were arrayed against each other. Visheshwar Bhatt, the author of *Subodhini* and *Madan Parijat* among ancient commentators, and Mandlik and Golap Chandra Sarkar among modern writers, on the one side, and Aparaka and Manda Pandit among the ancients and Hasington, Jolly, Mayne and Sarbadhikari among the modern, on the other. The weight of authority was evenly balanced and the Judge's task was most difficult. In this, the grand-father's great grandson won.

It will serve no useful purpose to notice any further Mr. Justice Piggott's contribution to the case-law. I would like to say only this that in criminal cases he took a very liberal view. In one case *Surendra Nath Mukherji versus Emperor* (1918 A. L. J. R. 478), he went up to almost unattainable heights and gave a judgment which, for its breadth of view and literary elegance, has seldom been excelled.

He had married the daughter of Mr. Walter Lyall, the elder brother of Sir James Lyall, for sometime Lieutenant-Governor of Punjab, and also Sir Alfred Lyall, the scholar administrator whose book on Warren Hastings is so well-known.

Mr. Justice Piggott never said an unkind word from the Bench. He not only knew his English law very well but was equally well-versed in the Indian law. It was a pleasure to hear his observations when a Senior Counsel argued an important question of law. There was nothing he did not know.

He was a great Judge, what is more, a kindly gentleman whom some of us still remember.