

RUPEE SERIES



BHAVAN'S BOOK UNIVERSITY

**BOMBAY HIGH COURT:
HALF A CENTURY
OF REMINISCENCES**

K. M. Munshi

GENERAL EDITORS

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BHARATIYA VIDYA BHAVAN, BOMBAY

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आ नो भद्राः क्रतवो यन्तु विश्वतः ।

Let noble thoughts come to us from every side.

—Rigveda, I-89-i

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BY

K. M. MUNSHI

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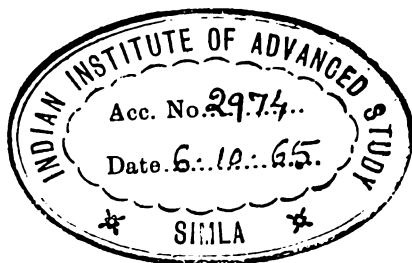
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GENERAL EDITOR'S PREFACE

The Bhavan's Book University volumes had rare success. About a million and a quarter volumes have been sold in about eleven years. However, there is an insistent demand for the stray volumes which the Bhavan has issued from time to time at a lower price. In order to meet this demand, it has been decided to issue the new One-Rupee Book University Series side by side with the Book University Series.

I hope this new One-Rupee Series will have the same good fortune which the other Series had, of being useful to those who are interested in the fundamental values of Indian Culture, and of reaching out to a wider audience.

Bharatiya Vidya Bhavan,
Chowpatty Road, Bombay-7.
Vijaya Dashami
September 28, 1963

K. M. MUNSHI



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AS I WRITE these reminiscences, my mind is crowded with memories of half a century of association with the Bombay High Court; of judges, lawyers and litigants; of cases upon cases which either I saw fought or fought them myself. But I can write only about those which have left a vivid imprint on my mind.

Reminiscences are impressions reproduced in words, of the impact of certain men and incidents on the memory of the author. By their very nature they are autobiographical and invariably tend to emphasise, under-tone or ignore certain aspects of every situation depending upon the nature of the impact. The fault, if any, does not lie with the author, but with the nature of this form of literature.

I joined the High Court in December 1910 for keeping terms for the Advocate (O.S.) examination, a poor, helpless young man, whose only asset was his will to work. Keeping terms for the examination was a joke. I spent most of the day in the Petit Library only to step into the Court of Justice Beaman a few minutes before the rising of the Court to get the obliging Registrar to sign my diary.

It was in the Court of Beaman J. that, in 1911, I came into contact with one Burjorji Rattanji, a young Parsi, who had lost the money he had won in St.

Leger's Sweep in an orgie of wild speculation. He was being used by a Marwari firm, Messrs. Bhagvandas Parashuram. I helped him in the preparation of the case; that was my first practical experience of how a suit on the Original Side was prepared and fought. In return, Burjorji presented me with law books necessary for my studies. The suit, decreed against him, was ultimately dismissed by the Privy Council (Bhagvandas vs. Burjorji, 45 I.A., p. 29).

In March 1913, I passed the Advocate (O.S.) examination, and in a well cut coat and bands, both borrowed, was sworn in before Beaman, J. I remember that as I hesitatingly lowered my puny self on a seat between two stalwarts of the Bar, I was trembling with fright.

The Age of Sir Basil Scott (1913-1918)

Sir Basil Scott, the Chief Justice, stern and formal, was dominating of presence and stingy of speech. He presided over the First Court with a terrifying solemnity, most of the time drawing doodles on the blotting pad on the pretext of taking notes.

Scott was a great stickler for propriety. Not even the formidable Advocate-General, Sir Thomas Strangman, the terror of the junior Bar, could indulge in his characteristic aggressiveness in his Court.

A few days after I was enrolled, I appeared before

the first Court for the appellant in a pauper appeal. With Scott C.J. on the Bench and Strangman to oppose me, I felt like diving under the table. The first few sentences of my address were an incoherent jumble. However, the Bench was patient and sympathetic and in a few minutes I found my feet.

In the course of my submissions, I happened to make an incorrect statement. Strangman sprang up, jingling the keys in his trouser pocket—a sure sign that he was going to be bellicose. I felt like collapsing. However, before he could say a few words, came the firm and decisive remark of the Chief Justice: “Mr. Advocate General, your innings are still to come. Please sit down.” Strangman sat down without a word. “Mr. Moonshee, you might proceed”, said the Chief Justice, and I did so with growing confidence.

At the end of my address I had acquired such confidence by the way the Chief Justice had heard me that I ventured to say: “My Lord, this is my first appearance before Your Lordships and I was very nervous at the beginning. May I repeat my argument on the first point which, I think, I could not place before Your Lordship coherently?” There was not a flicker of smile on the lips of the Chief Justice as he replied: “Mr. Moonshee, you may repeat”.

Later I outgrew my dread of Strangman and found him a genial man without any seniority complex. It

was one of the pleasantest experiences of the Bar to be told a spicy story by Strangman at the end of a trying conference.

His mastery over Indian statute law was great. He never relied upon memory; he never appealed to general principles of English law. No sooner you gave him the facts of a case, he would take the Civil Court Manual, turn up the appropriate Section of the relevant Act, and within a few minutes you had your facts reshaped according to law.

The Judge in whose Court I made some appearances from the start was Justice Beaman, to whom I was introduced by my friend Shri B.G. Kher (later Chief Minister of Bombay), then his reader. He was invariably kind to juniors.

Beaman J. was practically blind, though he had many extraordinary gifts. Day after day he could record the evidence given in Court on his typewriter, and while dictating judgments, however elaborate, he could summarise the evidence and deal with cases with accuracy from memory. He had a weakness for discussing abstract principles, which often made his judgments difficult to follow.

* * *

Justice Dinshah Davar was another formidable judge on the Bench at the time. For two years before his death in 1916, he was ailing most of the time, and sat

on the Bench with a glass of water and a bottle of medicine. Having been a very shrewd and practical lawyer, he knew most of the well-known litigants, and sometimes made up his mind even before the evidence was led. He was fond of making caustic remarks which were often disconcerting to the Bar. To the diffident junior, however, he was uniformly kind and helpful, to the assertive and over-confident, merciless. I was lucky to be in the former category.

The age of Scott was of sedate and leisurely justice. It was dominated by eminent counsel and not-so-eminent Judges. The Original Side litigation was run by a close guild of thoroughbred solicitors. Cases filed on the Original Side were not too many and were heard at a leisurely pace. Pleadings, mostly drafted and not dictated, were meticulously precise, though arguments were elaborate. Most of the work was monopolised by seniors, and rarely did a one-guinea brief for adjournment come the way of a junior.

Compared to what it is now, the Bar Library was a vast vacant place in which a few young lawyers, with their feet placed on the table, gossiped the whole day round. Uproarious laughter could always be heard at one or the other of the tables, and the flow of spicy anecdotes and scandalous gossip relieved the tedium of idle hours.

In the Common Rooms, however, some juniors

pursued *nishkama karma*—action without expectation of rewards. Homi Mody—now Sir Homi— worked on Sir Phirozeshah Mehta's biography. Motilal Setalvad worked his father's briefs. Thanavala pondered over law reports, getting ready to provide references on every point to any inquisitive senior. And all the time, I, wondering how to keep the pot boiling, went on preparing draft pleadings for Bhulabhai Desai whose chamber I had joined as a "devil", most of which he consigned to the waste-paper basket.

* * *

John Duncan Inverarity was for years the acknowledged leader of the Bombay Bar having joined it in 1870, and remained so throughout life. When I came to the Bar, a veritable mythology had grown up around him.

In almost any walk of life, Inverarity would have risen to the top, but he was content to be a lawyer and a lion hunter. He lived in a dingy old room in the Byculla Club in Bombay for about six months, spending the rest of the year in his native Scotland, playing the prosperous laird.

He was the most uncanny lawyer I have known. His superiority over all other lawyers lay in his wonderful equipment, his stupendous memory, his thorough grasp of facts, his unerring mastery of legal principles and a rare talent of presenting facts. When he re-stated

the facts of a case they fell into a pattern, and the case became the simplest of simple ones with all points entirely in his favour. His cross-examination, consisting of short and direct questions, was devastating, his sense of humour superb.

He had a genius for picking out the only point which could win a case. One day, bubbling over with a junior's enthusiasm for newly discovered points, I went to him with several authorities and told him that there were quite a few good points on which we could win the suit. In his brusque manner, he replied: "Young man, there are always ten good points in a case. Keep only one for yourself and leave the other side to discover the rest."

He continued to practise till fatal illness laid its hand on him in the corridor of the Court. He died on December 4, 1923, and when we laid him in his grave, all of us felt that the High Court was no longer the same.

* * *

Sir Chimanlal Setalvad, with whom I could claim the privilege of years of respectful friendship, was a great lawyer. Starting life very humbly, he became in succession, a leading pleader on the Appellate Side, one of the most brilliant advocates on the Original Side, a very popular judge though he occupied the Bench for a few months, and a capable Member of the Executive Council of the Governor of Bombay.

He had dignity and independence. I cannot forget the high-water-mark of forensic eloquence which he touched when he argued the appeal reported in *Surajimal vs. Horniman*, 20, *Bombay Law Reporter*, p. 184. Poise combined with lucidity and accuracy of expression went to produce that masterly address.

The greatness of Sir Chimanlal as a lawyer lay in the fact that he never stooped to conquer, never indulged in the cheap devices which sometimes even eminent seniors are led into adopting, consciously or unconsciously. He carried the judge with him by the sheer force of his intellectual power and his shrewdness in sensing the trend of his mind. To the other side, he was invariably polite, though very curt if an offence was given. I never knew him to take advantage of a junior, however raw the latter happened to be.

It was said of him that he was the true "socialist" in the profession. He believed in working only for five days in a week and for five hours a day and no more. If you happened to be his junior—as I was in many important cases—you must meet him in a conference, which often began at 10 p.m. and place all the facts before him. But as you stated them, he would re-state them for your benefit, take up his pen and make elaborate notes. From these notes alone—rarely aided by other materials from the brief—he would argue the case as he alone could do. His robust

common sense, his large experience and his grasp of the fundamental principles of law supplied the rest.

He died on December 10, 1947 at the age of 82, admired, respected, beloved by the Bar. Till a couple of years before his death, he would drift into the Bar Library, sit down at a table and gossip with juniors. He had the rare gift of enjoying jokes even at his own expense.

* * *

Mahomed Ali Jinnah was another eminent Indian lawyer of his period. Tall and spare and impeccably dressed, he stood in a class by himself. His advocacy was characterised by strong commonsense, great courage and forthright approach. A man of great integrity, he would never stoop to trickery though he could be devastating if a Judge or an opponent was inclined to be offensive.

Once a firm of Solicitors on behalf of their clients had asked him to put some questions in the Legislative Assembly of which he was a member and wanted to enlist his enthusiastic support by offering a sort of bribe in the shape of a brief for opinion marked 100 gms., a colossal figure for such a brief in those days. He grew wild with rage and flung the brief out of his chamber.

Once while attending a conference with Strangman, he found the latter offensive. Immediately he walked out of the chamber, and for years, never spoke to

Strangman, nor addressed him as "my learned friend." If a brief was offered to him with Strangman, the solicitor had to hold two separate conferences to instruct his counsel.

I had very happy relations with him. It was a delight for me to work with him when he was the President of the Bombay Branch of the Home Rule League and I, one of its Secretaries. In fact, I left the League and the Congress with him in 1919 when Gandhiji captured them. Our personal relations remained cordial till we drifted apart when after becoming the President of the Muslim League he discouraged contacts with those who had political differences with him.

* * *

In June 1913, I joined the Chambers of Bhulabhai Desai, then a comparative junior who had almost arrived in the front rank and was much in demand. Bhulabhai had a razor-sharp intellect. Hard working, clever, he was, even in those days, the most persuasive counsel at the Bar.

Devilling, in those days, was an institution, for a 'devil', became part of the Chambers of the leader and acquired both training and experience. Bhulabhai then had no faith in "devils". On the first day he told me: "Munshi, I will pass on to you the advice which, on the first day I joined his Chambers, Lowndes gave me: If you will be useful to me, I will be useful

to you.” Reading in his Chambers meant for me intensive training as he was an able draftsman and gave his opinions after a tireless struggle with adverse points and awkward facts.

The other rising junior at the time who had then already arrived was Jamshedji Kanga, now the doyen of the profession. He had risen in the profession by hard work, thorough reliability and a genial temper. He did not believe in pyrotechnics; never extemporized. His knowledge of law was profound. His great common sense invariably brought a balanced outlook on even difficult cases.

On the Appellate Side, Dewan Bahadur Rao and H. C. Coyajee were outstanding Advocates; both methodical and balanced, were thorough in their preparation. M. R. Jayakar was rising to the top of the Appellate Side Bar and few lawyers at the Bar during all these years could out-rival him in brilliancy of address.

The Age of Sir Norman Macleod (1919-1927)

In 1916 Scott C.J. was appointed a member of the Rowlatt Commission, whose Report was responsible for the Rowlatt Acts which used to be called the “Black Acts” in those days. Naturally, therefore, when he returned to the Bench, the Chief Justice had become rather unpopular. During his absence Sir Stanley Batchelor acted as the Chief Justice, but it was Justice

Norman Macleod who ultimately emerged as the outstanding judge on the Bench.

Macleod was the Official Assignee of the High Court before his elevation to the Bench in 1909. He assumed the office of Chief Justice in 1919.

On the Bench, Macleod J. was gruff and temperamental. He suffered under the disadvantage, if it can be so called, of having the gift of a very quick perception. In his anxiety to do substantial justice—whatever it meant—Macleod brushed aside all formal requirements of law and procedure. He would discover, of course according to him, the one and only point in a case, no sooner the pleadings were read. He had never any doubt about it and often an abrupt question from the Bench scattered counsel's advocacy to the winds.

With him, as the dominating member of the Bench, began the era of "expeditious justice".

With the tradition of "expeditious justice" firmly established in his court, counsel were driven to depend more and more on their agility of mind than on careful preparation. Once the judge nodded his head one way or the other, counsel had to resort to a settlement or to lead hastily selected but attenuated evidence suited to the demand of the Bench. The protest of the Bar and the public on this practice was voiced by Sir Chimanlal Setalvad who in 1920 while taking his seat on the Bench, said that "justice should not only be done, but should be seen as having been done."

In fairness it must be said that in most cases the view which Macleod J. took was substantially correct. He never forced a settlement except by pointing out the strength or the weakness of what he thought the pivotal point in the case. But his example proved infectious. In the hands of judges whose capacity for perceiving the real point in a case was limited, the exercise of personal pressure to get suits settled became fashionable.

As a result of this tendency few counsels could resist bringing pressure on their clients or the solicitors to rise to the expectations of the Bench. I know of one instance when a client shouted at his senior counsel. "I have given you the brief to fight my case and not to settle it". Nevertheless, the counsel, in exercise of his general authority, settled the suit.

* * *

The first World War ended by the Armistice of November 1919. During the earlier months, there had been heavy speculation in forward transactions in piecegoods, particularly "Nine Dragon" Japanese long cloth. The sudden end of the war led to a crash in the piecegoods market. The purchasers refused to take delivery and the sellers rushed to the High Court to recover damages.

The average number of suits filed on the Original

Side till then was about 1,200 a year. Now the number shot up to over 6,000 and some of us, juniors, began to receive our long awaited due. I remember having had to draft four or five pleadings per day, sometimes all dealing with "Nine Dragon" long cloth.

In 1920, these suits came on board before Macleod and in most of them Jamshedji Kanga opposed Bhubhai Desai. Expeditious justice went in action. The Judge called upon the seller to produce the godown book of his own vendor, and if the bales were found in the book as being in the godown on the day of delivery, he passed the decree in favour of the seller without further hearing.

Counsel took the cue from him. No sooner a case was reached, they called for the godown book of the previous vendor and if the bales figured there, a consent decree was taken; the only point left to be higgled about was the quantum of damages. On some days, between the learned Judge, Kanga and Desai, as many as dozen or more suits were disposed of. None of them had time to discover that the bales available in Bombay were limited in number and once the market came to know the vital point which the Judge wanted to be proved, new books of the vendors with appropriate entries came into existence. This was proved later in some other Courts where evidence was tested at length.

However, expeditious justice sometimes led neither to expedition nor to justice. In a case where I was led by Bhulabhai Desai, my leader, with his extraordinary gift of rising to the expectation of Macleod J., put the point in the case so neatly that, regardless of the facts, we got a decree for about twice the amount to which in any event we would have been entitled. The matter went up before an Appellate Bench presided over by Amberson Marten J., who had scrupulous regard not only for law, but the forms of law as well. He delivered a thundering judgment on the irregular way in which the case was handled by the lower court and ordered a re-trial.

Macleod, who in the meantime had become the Chief Justice, had the case placed before him. He was angry that his disposal of the case had been challenged. Chimanlal Setalvad who appeared for the successful Appellant (Original Defendant) was no less emphatic in support of the decision of the Appellate Court.

Ultimately Macleod referred the case to Pratt J., who after a long trial gave us the decree, but for an amount very much smaller than the amount decreed by Macleod in the trial court, as it should have been, if the case had been allowed to be properly conducted. The defendant went up in appeal and the decree of Pratt J. was confirmed.

Expeditious justice had the result of involving not less than six judges in the case, five hearings four of them being lengthy, and the costs on both sides perhaps very much more than the amount of the decree.

When as Chief Justice, Macleod presided over the Appellate Side Bench, there was dismay and panic. In appeal after appeal, he either called upon the respondent to support the judgment, or dismissed the appeal after putting a few points to the appellant. The Appellate Side lawyers trained to place studied arguments before the Court did not know what to do. Sometimes Sir Lallubhai Shah, the other Judge on the Bench, came to their rescue. After the Chief Justice had handed back the papers dismissing the appeal, he would quietly tell the lawyers to argue the case, because as he said, he was 'not so quick at appreciating the points of the case as my Lord the Chief Justice'. Shortly afterwards, Lallubhai Shah was dropped as a companion Judge from the First Bench.

In spite of this Sir Norman Macleod was a great Judge. When he felt that there was a substantive point, he would go into it carefully, though even then his impatience could be controlled only if there was a strong and pertinacious counsel.

The murder trial of a young zamindar of Madras, over which he presided in the full panoply of wig, red gown and knickers, showed Macleod C.J., at his

grandest. The accused was charged with having shot dead the British principal of a Zamindar's College in which he was studying. As a result, the Anglo-Indian community in Madras lashed itself into a frenzy, considering it a political murder. Its leading members openly declared that the boy should be hanged in front of the Principal's bungalow. The Indian community took up the challenge, and the case was transferred to the Bombay High Court.

Day after day, Macleod as the presiding Judge, handled the prosecution witnesses, testing their veracity and bringing out incongruities. After one of his ablest performances in addressing the jury, a verdict of not guilty was returned, and the crowded Central Court echoed to thunderous applause.

In the course of the trial, some very vital points which had not struck the defence, were made by the Judge himself. A few days later, when I happened to meet him, while talking about the case, he told me. "I had waited for the mosquito net to be produced through which the shot was fired. Had it been produced, I would have been able to tell you exactly which of the others had fired the shot by drawing a line through the hole which it had passed. The way the bullet ran, this boy with his height could never have fired the shot which killed the man."

* * *

The balance which was being tilted in the time of

Macleod J. in favour of expeditious justice, was however adjusted by some of his colleagues.

Of all the judges, great and small, that I have known, Lallubhai Shah stands on a pedestal of his own. Slow, cautious, fair-minded, he was, along with Marten J. and Fawcett J., the most judicial-minded judge I have ever come across in our court. He never took a decision until, in all conscience, he was sure that his judgment was right. In face of the advocacy his sub-conscious mind ceaselessly struggled against the suspicion that an attempt was being made to get him to take an unjudicial course. Above all, his independence was marvellous. Neither Government nor riches, neither colleagues, nor counsel, could deflect him a hair's breadth from the stern sense of judicial duty with which he performed his work on the Bench as well as in all other spheres of life.

By judicial-mindedness I mean the quality in a judge of not being influenced by the papers read before the case is opened; of being ready to listen to counsel till the end with an open mind: of having scrupulous regard for relevancy and yet neither too talkative nor too silent nor dogmatic; of weighing the pros and cons of relevant points with unbiassed mind, and of writing the judgment in which all the points are dealt with in a proper perspective. Few judges are

gifted with this quality in sufficient measure.

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Besides Shah J. and Marten J., Justice Pratt, Justice Fawcett and Justice Crump, all the three I.C.S. men, were judges in the highest traditions of the High Court. Their attitude to the Bar was invariably considerate, their knowledge of law reliable. They had above all the judicial mind, Fawcett J. being the most outstanding.

Kajiji J. was entirely different. Having come from a business family of Bombay and having been himself the Prothonotary of the High Court for many years, he could fathom the mysteries of Bombay business, and had shrewd insight into the Indian book keeping. In deciding cases, he thought lightly of the forms of law, which under a sound judicial system are as important as the principles of law themselves. His treatment of juniors was far from encouraging. He made no secret of his view that his Court was meant only for seniors, though he made an exception of select juniors. He was uniformly kind to me.

While on the Bench, Kajiji J. involved himself in some business affair and ultimately had to resign after he had been examined as a witness at the hearing of the misfeasance summons in the Anglo-Indian Steamship Navigation Company (In Liquidation).

In *Bai Gulab vs. Jeevanlal* (24 Bom. L. R. 5) case, Kajiji J., who believed that the judge need only

be a man of the world, decreed restitution of conjugal rights, when the defence we had put forward on behalf of the woman was that the marriage, being *anuloma*, was not valid according to Hindu Law. Kajiji J., just before rising for the recess, delivered judgment in favour of the husband, and in spite of my protests, ordered the girl to be produced immediately after recess, to be handed over to the husband.

I had anticipated that some such catastrophe was coming, and so, while the Judge was delivering judgment, I had scribbled some grounds of appeal on a rough piece of paper. No sooner the Court rose for the recess, I walked into the chambers of Macleod C.J. and complained to him that the learned Judge, in disregard of our plea that the execution should be postponed till after the period of appeal, had ordered immediate delivery of the girl to the husband at 3.30 p.m. I had no time to prepare the memo of appeal, no time to file it, no time to move the Court, and in the meantime gross injustice was being done to her. Macleod C.J. took the rough notes on the grounds of appeal I had made and asked me to give notice to the other side to appear at 3.30 p.m. before his Court.

At 3.30 p.m. Strangman appeared for the husband, strongly protesting against the unceremonious way in

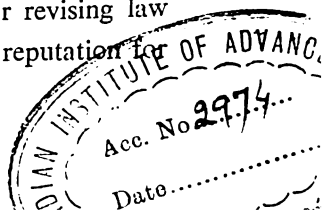
which I was moving the Court. Macleod C.J. produced my rough draft, asked the Registrar to number it as an appeal, admitted the appeal straight-away and stayed the execution of the decree, which had not even been drawn up. The Advocate-General thundered against this irregularity. Macleod's reply was: "Where the marriage itself is challenged, how can I allow the woman to go and live with the man?". If there had been another Chief Justice, the defendant would have been on a way to motherhood before the appeal could have been filed!

* * *

Among the additional judges who graced the Bench during the period were Sir Chimanlal Setalvad, Jamshedji Kanga, H.C. Coyajee, D.F. Mulla and V.F. Taraporevala.

Though the requirements of the situation made it necessary to appoint additional judges, the practice of recruiting on the Bench practising lawyers who had no stability of tenure, scarcely added to the dignity and worth of the Bench.

Dinshaw Mulla was in a class by himself. He was a jurist both by temperament and ambition. He loved chamber work. His pleadings and opinions were neat and well thought out, but he shrank from court work. He preferred to spend time in writing or revising law books which had justly acquired a great reputation for



lucidity and method. On the Bench, whenever possible, he would pursue a point of law through various authorities and sum up the law in his inimitable fashion. He had a hand in drafting Bills which ultimately took shape as the Sale of Goods Act and the Partnership Act. The culminating point in his career came when he became a Judge of the Privy Council.

* * *

The spate of litigation during the period gave an extraordinary scope to the junior advocates and incidentally led to what was termed "The Trial of the Seven Bishops", when in February 1921 seven courts were formed on the Original Side of the High Court on account of the heavy arrears of post-war litigation.

Bhulabhai Desai was then the Counsel most in demand in the Original Side. Motilal Setalvad, M.V. Desai, Intravadan Mehta and myself were reading in his chambers, and Kanga, having gone to the Bench, Kania, who was 'devilling' with him, also joined us. So did T. K. Thanawala.

In those days the juniors held the brief for senior counsel even for conducting cases. As most of the briefs on all the boards gravitated to Bhulabhai Desai, he used to ask one or the other of us to hold briefs for him in different Courts. So, when the great day came and seven Judges sat on the Original Side, Desai

or one of us holding his brief appeared in almost all the cases on the boards of all the seven Courts.

This led to a furore in the Bar Library. Those who expected to make good during this season of plenty, noted our appearances, approached the Advocate-General, and, in consultation with Inverarity, drew up a charge against us of being guilty of unprofessional conduct by carrying on business in partnership. Desai was also separately charged with having blackmailed a solicitor into marking a heavy fee on his brief by threatening to give it up in the middle of a case.

The Bar Association appointed a tribunal consisting of the Advocate-General, Sri Bahadurji and Sri Coya-gee to hold an enquiry. In the meantime it passed a rule abolishing the practice of holding briefs. The result was unexpected. From the next day, the briefs which we were 'holding' for Desai, came to some of us in our own right.

After an exhaustive enquiry, we were acquitted of the charge made against us and Bhulabhai, of the charge individually made against him, but bitterness between the two groups of counsel persisted for a long time.

* * *

I have vivid recollections of some extraordinary long-drawn-out cases conducted with rare thoroughness, which might favourably compare with such cases in the Chancery Courts in England.

The first one, Advocate-General vs. Yusufally Ebrahim (24 B.L.R. p. 1060), (generally known as Chandabhoj gulla case), was decided by Marten J. after a very protracted trial. In a very exhaustive judgment, he surveyed the history of the Dawoodi Bohra community as well as of the position of Mullaji Saheb as its religious head and trustee of the gulla. The controversy then raised had its off-shoots in the shape of diverse litigations in different courts during the last forty years, in some of which I happened to appear. The latest in which as usual I appeared for Mullaji Saheb, was decided only in January 1962 by the Supreme Court in which the important question of religious freedom was involved.

Another suit which led to numerous inter-locutory and other proceedings with about a dozen counsel kept engaged on every occasion, was the partition suit filed by two of the grandsons of Raja Bahadur Shivlal Motilal, a leading Marwari banker of Hyderabad, against their father Bansilal, mother and minor brothers. The proceedings in the suit were a numerous; the ill-will between the warring members of the family intense. The course of the suit ran for several years, ultimately ending in a settlement in the Court of Justice Pratt.

In the elaborate arguments on a Hindu father's right to separate some of his sons and keep the others jointly with him, occupying several days, I led Kania for

the minor sons represented by guardian *ad litem*. Supporting the father's contention—in spite of the angry protests of my boy clients—I had the opportunity of tracing elaborately a father's rights under Hindu Law from the Rig Vedic period downwards.

The third noteworthy action was a misfeasance summons taken out by the Liquidator of the Anglo-Indian Steamship Navigation Co. Ltd. (in liquidation) against its directors, among whom were Sir Hukumchand and a son of Kajiji J., which, if I remember right, lasted for over thirty hearings. The whole law of a director's liability was thoroughly canvassed. As it involved intricacies of law, facts and accounts as well as heavy liability of directors like Sir Hukumchand and the judicial reputation of Kajiji J., who had permitted directors' meetings to be held in his Court chambers in his presence, it led to forensic fireworks on all sides.

All these cases were the result of the tremendous labours of some eminent solicitors, the like of whom a Court with a highly efficient dual system alone can produce. The age of hurried preparation of cases and quick disposals had not yet undermined their method of work.

There was, for instance, F.E. Dinshaw of Messrs. Payne & Co., a very formidable solicitor-cum-businessman, who handled his litigations like battalions with Napoleonic strategy. His preparation of a case left

nothing to be desired. In his observations he could marshal facts and law as well as any senior could, but with marvellous brevity and lucidity. Once when an offer of settlement was made to me by the opposing counsel, he as solicitor instructing me told me in his decisive way: "F. E. submits only to a decree against him passed by the Privy Council. I do not come to this court for a consent decree."

In point of preparation and strategy, nobody could beat Jamietram of Messrs. Matubhai Jamietram and Madan, who for many years presided over the little durbar of solicitors held every working day morning in the Bar Common Room. When he prepared a case, manipulated interlocutory proceedings or instructed counsel during trial, he fought his client's case with a rare tenacity and determination, bringing to bear upon it all the resources of his great astuteness.

The instructions and observations of Manchershaw Vakil of Messrs. Manchershaw and Narmadashankar, were always thorough, whatever the stake in the case. He marshalled the facts and discussed law with meticulous clarity, sometimes at great length. If you had a brief prepared by him, all that you had to do was to build your arguments on the foundation of his exhaustive research and presentation. Whatever little reputation I gained in Shivalal Motilal's and the Anglo-India Steam Navigation Co's. cases was partly the result of his labours.

Before Sir Amberson Marten came to the Bench in 1916, he was practising at the Chancery Bar in England. In my opinion, in spite of some limitations, he was the most erudite and judicially-minded Chief Justice of those who presided over the Court during the period I am dealing with.

When he came to the Bench in 1916, he was a stranger to India, and till the end he could never catch Indian names properly. For some time he found it difficult to grasp the intricacies of Indian Law. Once in the beginning when a lawyer wanted to tell him about the various schools of Hindu Law, he, not knowing the oddities of that Law, did not understand how schools of law could have anything to do with the law he had to administer. He exclaimed: "I would not have so many schools of Hindu law in my Court."

In the course of the protracted hearing of Chandabhoj gulla's case (*Advocate-General of Bombay vs. Yusufally Ebrahim*, 24 B.L.R. p. 1060), he struggled heroically with Indian names and the ecclesiastical history of the Dawoodi Bohra community. In the end he summed up the case in one of the most remarkable judgments delivered in our court.

Marten J. had a great regard for environment. He would not begin work till the fans were in working order and the panels of doors opened at the proper

angle. He insisted on correct professional manners. Once he was angry at an upcountry lawyer who began his address with his hands in his trouser pockets.

Marten J. would be upset if you did not state the facts of a case chronologically, or cited a case out of proper sequence or one not bearing on the point. He wanted method and he enjoyed nothing more than at the very outset counsel stating seriatim all the propositions which he wanted to establish. But once these extraneous requirements were fulfilled, he settled down to hearing the case with a completely judicial attitude, following every legal point carefully, entering into discussion freely, and finally delivering judgments which often were models of clarity and balance.

He had a dislike for what he called 'witness actions'. He could rarely repress his horror if the Judge of the lower Court expressed himself in unhappy terminology. I remember how in an appeal, he was horrified when I read out from the judgment of the trial Court the statement that the transaction on the basis of which the decree had been passed, was "more or less a concluded contract". "More or less?", he exclaimed. "Either there is or there is not a concluded contract."

During this period, the leadership of the Bar had materially altered. Sir Chimanlal appeared only in select cases and infrequently. Jinnah had drifted more

and more to politics, very rarely conducting long cases. On reverting from the Bench, Kanga had been appointed Advocate-General, and in his unostentatious way, had emerged as the leader of the Bar. Bhulabhai, who had overshadowed all his colleagues in advocacy, was opening the gates of all-India practice for Bombay lawyers.

In 1930, Sir Amberson Marten retired. My relations with him were very friendly and I remember how when I got arrested for offering salt satyagraha and was sentenced to imprisonment, he was very much annoyed at the lapse of one of whom he thought well.

Coltman had joined the Bar and acquired a large practice mainly due to his thoroughness, pugnacity and his refusal to be a party to settling cases. Among others, Taraporevala, Motilal Setalvad, Kania and Daphtary were most in demand, Amin and Bhagwati following close. Another counsel who distinguished himself for industry and thoroughness in this period was N.P. Engineer.

In 1927, I was elected member of the Bombay Legislative Council and had to give up practice for some months in the year.

On the Appellate Side, Govindlal Thakore, Shingne and Divatia were the leaders, Jayakar, of course, continuing to occupy a unique position.

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From its earliest days, the High Court Bar has always contributed its share to politics. Telang, Pherozshah Mehta and Gokuldas Parekh were, in their time, great names in politics. Sir Chimanlal, on whom fell the mantle of Sir Pherozshah in politics, was a liberal stalwart in the country throughout his active life.

Jinnah dominated Indian politics for a considerable time, and in 1915, under his leadership, quite a few of us, including Mangaldas Pakvasa and H. V. Divatia, actively worked for the Home Rule League.

In 1927, it was Chimanlal Setalvad who encouraged me to seek election to the Bombay Legislative Council, and after I resigned my seat in active support of the Bardoli Satyagraha of 1929, I eventually under the leadership of Gandhiji landed myself in jail in 1930, soon to be followed by Purshottam Trikamdas who was then doing very well for a junior.

In 1931, a notice was issued as to why disciplinary action should not be taken against me for joining the satyagraha. However, it was withdrawn as a result of the Gandhi-Irwin pact. In spite of this, I could resume steady practice only in 1934 on my release from jail after my two years' term of imprisonment.

With my joining the satyagraha movement in March 1930, my association with the High Court entered a different phase. Out of the thirty-one years which

have since passed, I have left practice for different periods aggregating to 18 years, busy getting locked up in jail, occupying public offices, helping in Constitution making or carrying on political activities. During the rest of the time, my professional activities alternating with spells of public work often took me away to different parts of the country. Naturally, therefore, my contact with the High Court became fitful and my impressions of it fragmentary.

In 1934, when I resumed practice, the complexion of the High Court had changed. Sir John Beaumont had been the Chief Justice for over three years. Among the new judges were B. J. Wadia, H. J. Kania, H. V. Divatia. Jamshedji Kanga continued to be the elder in the profession. Bhulabhai had drifted to politics. Coltman, Motilal Setalvad, Engineer and Dephtary were the leaders of the Bar, with Amin and Bhagwati among the prominent seniors.

The new age had brought its own changes. The stenographer now dominated the Bench and the Bar. Judgments and pleading had become prolix and unprecise. The Judges were not so unforgiving towards not-so ready counsel. A new race of junior counsel and solicitors also came into being, who lacked the provocation to be as thorough as those who were brought up in the traditions of the earlier periods, when litigation was leisurely and returns more remunerative in terms of the cost of living.

Sir John Beaumont was an extremely able judge, both of fact and law, combining despatch and balance. His grasp was quick, and his judgments, almost all dictated on the spot, were not only lucid but couched in happy language. He made on-the-spot judgments fashionable—a fashion which, when followed by less capable judges, was to raise a plentiful crop of prolix and rambling judgments, the despair of law reporters and the headache of the Bar.

On the Bench and outside, Beaumont J. was always courteous and pleasant. No practitioner in his court felt the strain which was the inevitable lot of lawyers in the days of his predecessors. He was free from racial bias, though in later years the Civil Disobedience Movement developed in him an anti-Indian complex in matters political.

In the old days, the relations of the Chief Justice and the Governor were uniformly cordial, but those of the High Court with the Home Department of the Government of Bombay were strained. As a result, the Chief Justice dealt with the Government only at the Governor's level and asserted his independence against the Home Department's attempt to encroach upon the power and authority of the High Court particularly over the judiciary in the State.

When in 1937 I assumed the Office of the Home Minister in the first Congress Ministry, the situation

became complicated. We were pledged not to allow the Governor to interfere in the administration. Some of my colleagues thought that Beaumont had become the rallying centre of Congress mal-contents. This, however, was not true. As ministers with new-found power, we were anxious that every one should bow before us, and the High Court as an independent centre of influence was an eyesore to us. Naturally enough, those who were dissatisfied with the Congress Ministry, sought the protection of the High Court.

I decided to put an end to the continuing feud between the High Court and the Home Department. So I walked up to Beaumont's room, a strange thing for a Home Minister to do in view of the then existing relations, and secured a promise from him that all points of controversy thereafter should be settled between him and me by mutual discussion and not by official correspondence.

Some of my colleagues resented my arrangement with the Chief Justice. They wanted me to stand up to the High Court whatever that meant, and thought that my going to appease the Chief Justice had brought the prestige of the Government low. I retorted by saying that our greatest safeguard against public criticism would be to respect the independence of the High Court. It would be an evil day, I said, when High Court Judges had to depend upon the goodwill of ministers.

Though our arrangement went on satisfactorily with regard to administrative problems, Beaumont, on occasions, could not help being unnecessarily critical of the Congress Government from the Bench.

I happened to be responsible for quelling one of the worst riots that threatened Bombay in 1938. They had become a recurring feature of the city's life, extracting a toll of scores of human lives every time. On the occasion, I had to warn some newspapers not to indulge in the pernicious practice of reporting murders community-wise. Three or four papers did not heed the warning, and I got the Chief Presidency Magistrate to issue an order under section 114 Cr. P.C. subjecting their reports about the riot to precensorship. This order, its purpose served, was withdrawn on the third or fourth day.

In spite of this, one newspaper went to the High Court in revision against the order which was no longer in force. In the course of the hearing the Chief Justice expressed a dislike of the Government in terms which I did not expect him to use from the Bench.

When I happened to meet Sir John a few days later, he triumphantly remarked: "Munshi, I have declared your order invalid." I could not help retorting: "If the riot breaks out again, I am going to issue a similar order if it is going to help. My duty is to restore order, your duty will come after order is restored, and if it is restored."

During those days, I had to undertake another delicate task which touched the High Court. Kenneth Kemp, a very conscientious lawyer and friend of mine, was then the Advocate-General. However, I wanted Motilal Setalvad as Advocate-General to help me to deal with the constitutional questions which continually arose between our Ministry and the Governor, for we were then pledged to work for a fully responsible government in the Province despite the provisions of the Government of India Act. I therefore met Kemp at his house and explained the situation. If he had hesitated, it would have meant a trial of strength between the Governor and the Ministry.

Few men in the position of Kemp would have taken my suggestion in such a friendly spirit. He saw the point I was making and agreed to submit his resignation, regardless of what the Governor or the Chief Justice might think about it. Neither of them, when they heard it, liked what I had done. With that began Motilal Setalvad's career as an Advocate-General.

Talking about Motilal Setalvad, I cannot but refer to the great prestige which he has brought to our High Court Bar in Free India. For twenty-four years now, he has upheld the highest traditions of the Bar known to any part of the world. He declined knighthood. Rumour has it that he declined the offer of Chief

Justiceship. He resigned office during the "Quit India" movement.

His advocacy has remained unmatched; his sobriety of outlook unshaken. He has combined the different roles of the principal adviser of the Provincial and Central Governments with the responsibilities of a patriot and the independence of an upholder of the Rule of Law.

As Attorney-General of India since 1947, he has been in more respects than one an institution in himself.

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During the years from 1937 to 1946, two outstanding Judges of the Court were Broomfield J., who maintained the tradition of conscientiousness which characterised I.C.S. judges like Fawcett J. With his vast experience as a lawyer and his native shrewdness, Kania J. soon acquired the reputation of being, after Sir John Beaumont, the ablest Judge on the Bench.

It is very difficult for a judge, who has been a practising lawyer, to retain openness of mind till the end of the case. However, Kania J., in spite of leaning towards expressing strong opinions in the course of the hearing of a suit, curiously for a judge of his calibre, developed the habit of never closing his mind to a new point of view, even if it was placed before him at the end. Whenever, about the time an argument was to

close, he turned his face towards the sea and kept gazing at it for a minute or two, we knew that the portals of his mind had been opened for a judicial re-appraisal of a new point.

During 1937-39, there were strong differences of opinion between my colleagues and myself in the Congress Ministry about abolishing the Original Side. The legislature, on which the District Bar is always amply represented, naturally finds it difficult to understand why the dual system to which they are aliens, should have a right to exist.

I was convinced and am convinced still, that the dual system is calculated to maintain higher standards of the Bench and the Bar than any other system, and is indispensable to large commercial cities like Bombay and Calcutta. Kher, the then Prime Minister of Bombay, was against it and wanted me to scrap it. He even got Gandhiji to put pressure on me to do it.

When questions were asked in the Legislative Assembly as to when the dual system was going to be scrapped, words escaped my lips: "Every country gets the government it deserves. Similarly every people get the judicial system it deserves, and, possibly we do not deserve the dual system." A storm broke out in our inter-ministerial conference.

I stalled the movement as much as I could. The Chief Justice gave me the assistance of N.P. Engineer,

then an Additional Judge, to show the dual system was useful and even economic in a commercial city like Bombay. We also suggested several reforms in the working of the system some of which were ultimately introduced.

What followed was an illustration of how the new race of politicians looked upon the administration of justice. The pressure to do away with the dual system was insistent. Whatever happened to the dual system, Kher, the Chief Minister, wanted that a City Civil Court should be brought into existence to take over a substantial part of the Original Side litigation. The Finance Minister went on calculating what return would be received by applying the Court Fees Act to the Original Side, but would not spare funds for a new building for the proposed Court unless the High Court was prepared to reduce its expenses in a measure which would give an appropriate return on the investment. At one stage it was suggested that the shortest cut to achieve the object would be to invest the Small Causes Court with the powers of a City Civil Court.

I had a hard battle to fight. At one stage in the controversy, even my relations with some of my colleagues came to be strained. Any way, in these difficulties the only way to maintain close association between the Bench and the Bar of the new Court with those of the Original Side, and thereby to foster uni-

form standards of judicial efficiency and professional conduct, appeared to be to plant the City Civil Court near about the High Court premises. I tried to secure for the new building the intervening open space between the P.W.D. building and the High Court premises, but met with no success.

I had long discussions with the Chief Justice about the matter. We were both agreed that if the City Civil Court was to come, there should be the closest association between it and the High Court. The only way left, therefore, was to build the new Court premises in the open space in the rear of the High Court buildings.

To satisfy the financial conscience of the Finance Minister, a case was made out that by building the new premises in the High Court compound, the Government would save the heavy rent that was being paid for the office of the Official Receiver. Such a building would also fetch a good return from the accommodation provided by way of counsel's chambers.

Some people objected to the site thus chosen. The Court premises, if constructed in the High Court compound, they contended, were likely to be ugly and stuffy. But the Chief Justice, I am glad, stuck to the decision. That is how the building of the new Court came to be constructed where it now stands.

By the time the new building was completed, how-

ever, the World War II came to be declared. The Congress ministry went out of office and the proposal to establish a City Civil Court was given up. The new building was then used for the Industrial Court, as well as for the office of the Official Receiver and for the chambers for counsel. After the World War II ended, Kher ministry came back to power and when the City Civil Court came into existence, it was housed in these premises.

After the Quit India movement, Beaumont C. J. was a different man. He had developed likes and dislikes even as a Judge. Relations between him and Kania J. became publicly strained for reasons I need not refer to here.

Sir John Beaumont retired on September 10, 1943, to be succeeded by an English lawyer, Sir Leonard Stone. Kania J., whose experience and attainments entitled him to the office, was superseded. He felt very sore. So did the Bar. But it was all to the good. In 1946, Kania was appointed a Judge of the Federal Court.

In course of time he became the first Chief Justice of the Supreme Court of India, an office which he not only filled with high distinction, but which enabled him to establish for the Supreme Court the undisputed position of an independent constitutional organ of the Union of India charged with the responsibility of safe-

guarding the Rules of Law and the fundamental freedoms of the people. I can never forget the ringing tones in which he pledged the Supreme Court to independence, when it was inaugurated in 1950.

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The High Court in the Post-Freedom Age

After August 15, 1947, the High Court entered a new stage of its life as the State High Court woven into the pattern of integrated judiciary established by the Constitution with the Supreme Court at the apex. Chagla J. was appointed acting Chief Justice in the place of Sir Leonard Stone, who went on leave preparatory to retirement.

My impressions of the High Court of the period after 1947 are scrappy and passing. Practically from the last quarter of 1946, to the second quarter of 1957, I was engaged in public activities or holding public offices. Since 1957, I have resisted the temptation of appearing in the High Court except on infrequent occasions. I would, therefore, prefer not to write about this period.

During this period, anyway, the Original Side was further truncated. The qualifying examination for Advocates (O. S.) was unnecessarily abolished, and the Original Side opened to all advocates. Constitutional and fiscal litigations grew in volume and importance, leading to specialisation among lawyers. With

the raising of the pecuniary limit of the Original Side, the solicitors' profession lost its glamour and importance.

Since 1957, the old guard has drifted away. A new race of lawyers has come to the front. The Bar Library, no longer a roomy place, is now crowded with studious young lawyers.

I go to the Bar Library sometimes, meet the juniors of the old days who are now leading counsel, or gossip with enthusiastic youngsters anxious to make their way at the Bar. I love the world which it represents—a world in which I grew up and thrived, round which all my hopes and disappointments were centered for decades. Living in that world I made friends whose lives were woven with mine. Some of them, alas, are no more; some have migrated to other courts or other spheres of life; some are on the Bench in our or other High Courts; many are still attached to me in a bond of brotherhood.

Whenever I go to the Bar Library or step into a court room, I feel like returning home. I am reminded of the battles fought and won in those court rooms, where justice was vindicated or smothered, where my personal life mingled with the life of one of the finest cities in India.

When I look back, I feel proud of the role played by the High Court during the last fifty years, parti-

cularly during the transitional period of our history and of the great tradition established by independent judges and fearless lawyers which forms the bulwark of freedom in this or for the matter of that, in any country.

If the Rule of Law is the very basis of genuine freedom, a strong Bench and Bar, independent and fearless, form the pivot round which it revolves. And with my fair share of knowledge of the trends in this country, I glory in the fact that even during sixteen years of ministerial rule, pledged to extend its power and influence over every sphere of life, the Bombay High Court has stood, and is accepted by the public as standing, as the proverbial 'temple of justice', where judges stand away from extraneous influence and justice is dispensed without fear or favour.

