

## **A Historical Retrospect of the Administration of Justice in Kumaun**

*BY SRI N. D. PANT,*

*Advocate, High Court, Allahabad and Supreme Court*

In 26th April, 1815, Almora was captured by the British forces, and under the treaty of Sigauli in 1816, Nepal formally ceded the territory now comprised in the Kumaun and Uttarakhand Divisions, district of Dehra Dun, and certain other areas to the East India Company. A province of Kumaun was formed consisting of the erstwhile districts of Almora, Garhwal and Naini Tal. Garhwal was separated from Kumaun under Act X of 1838, and another Terai district was also created. Thus the province of Kumaun included the districts of Kumaun, Garhwal and Terai. But on 13th October, 1891, Naini Tal district was formed by combining the Terai and Bhabar area, with certain hill patties which were formerly included in what was known as Kumaun district which there after came to be known as Almora. The three districts of Almora, Naini Tal and Garhwal constituted the Kumaun Division. On the merger of the erstwhile Tehri State in 1949, Tehri district was also added to this Division.

On the absorption of Kumaun with the rest of British India, the then Governor-General appointed one Hon'ble E. Gardner to assume the office and title of Commissioner for Affairs of Kumaun and Agent to the Governor-General on 3rd May, 1815, and Mr. G. W. Traill as his Assistant. But as the former mostly remained busy with his military and political duties in Nepal the burden of administration fell on his Assistant, Mr. Traill.

The administrative history of Kumaun Division, in the words of Whalley in his "Law of Non-Regulation Provinces" divides itself into three periods "Kumaun under Traill; Kumaun under Batten and Kumaun under Ramsay. The regime in the first period was essentially paternal, despotic and personal. It resisted the centralising tendency which the policy of the Government had developed. It was at the same time, though arbitrary a just, wise and progressive administration. Mr. Traill's administration lasted from 1815 to 1835.

"Mr. Batten ruled Kumaun during 1836-56, but the early stages of his rule were marked by an influx of codes and rules and a predominance of official supervision which gradually subsided as Mr. Batten gained influence position and experience. Thus the second period glided insensibly, into the third which nevertheless has a distinctive character of its own. In Sir Henry Ramsay's administration we see the two current blended. The personal sway and unhampered autocracy of the first era, combining with it the orderly procedure and observance of fixed rules and principles which was the chief feature of the second."

It may be stated that in the earliest times administration of justice, civil or criminal, was hardly any problem to the British Government. From 1st of January, 1820 to 31st December, 1821 the total number of criminals confined in Jail amounted to sixty-five out of whom 4 had been convicted of murder, 3 for thefts above Rs. 50 and the rest for petty thefts, assaults, defamation, forgery, etc. In the words of Traill himself in his Statistical Sketch of Kumaun, "Affrays of a serious nature are of rare occurrence and even petty assaults are most infrequent. Applications to court on the subject of caste are numerous; these are invariably referred to the Pandit of the court, whose decree delivered to the party concerned is conclusive. In civil judicature the simple forms of the preceding Government have been generally retained. The petition originating the suit is required to be written on an eight-anna stamp but no institution or other fees are levied; a notice in the form of an ittanama is then issued which process is served by the plaintiff and in three cases out of four produces a compromise between the parties; where ineffectual it is returned by the plaintiff into court, when the defendant is summoned. The parties then plead their cause in person and should facts be disputed on either side, evidence is called for. Oaths are never administered except in particular cases and at the express desire of either parties. Suits for division of property or settlement of accounts are commonly referred to arbitrators selected by the parties. In the issue and execution of decrees, the established forms are followed, but the leniency of native creditors renders imprisonment and sales in satisfaction of decrees uncommon. At present only one court (Commissioner's court) exists in the province for cognizance of civil cases, and the absence of fees and simplicity of forms as therein practised joined to its frequent removal to every part of the country, have hitherto tended to prevent any inconvenience being experienced from want of mofussil courts. The gratuitous administration of justice has not been found to excite litigations" (Our Law and Finance Ministers to note!)

Untrammelled by any laws, rules and regulations Mr. Traill made his own arrangements for administration of civil and criminal justice. He was not only the head of the civic administration but the sole legislator and dispenser of civil justice. He had framed his own rules of procedure for presentation of plaints on an eight-anna stamp irrespective of the valuation of the claim on presentation of which the plaintiff was required to serve notice on the defendant himself. In seventy-five per cent cases the claims were compromised. In others the parties were first examined where after their witnesses, if any, were examined. but oath was generally not administered.

There were no lawyers and no one was permitted to act as an agent of the contending parties, and the maximum duration of a suit was twelve days. Incidentally it may be stated that Mr. Traill also conducted the first 'Nazarandazi' survey of Kumaun in Samvat 1880 i. e. 1818 A. D. (commonly known as "Sal assi") which still continues to form the basic document for determining village boundaries. There was no actual survey, but Mr. Traill nationally allotted land amidst the different villages by reference to natural or prominent features existing on the northern, southern, eastern and western boundaries of each village. Actual survey operations in most of the areas of Kumaun were undertaken for the first time by Mr. Beckett in 1856.

According to Walton's Gazetteer for the District of Almora first Munsif was appointed in 1829 and seven Kanungos were invested with the title and powers of Munsif, and title of Sadar Amin was conferred on Court Pandit. These officers continued to exercise powers of civil judges till 1838 when these offices were abolished and the Act X of 1838, was enforced under which the two districts of Kumaun and Garhwal each had one senior Assistant, one Sadar Amin and one Munsif under Sudder Dewani Adalat. In Civil Administration, Kumaun Province was placed under the jurisdiction of Sudder Dewani Adalat in 1838 and remained subject to its jurisdiction till 1864. The Assam Rules with certain modifications were adopted for the administration of civil and criminal justice in 1839. These rules were superseded in 1863, by a set of civil

and revenue rules known as Jhansi Rules. Statutory authority was given to these rules by section 2 of the Non-Regulation Districts Act (Central Act XXIV of 1864), under section 4 of which Civil Procedure Code was also made applicable. Rules for service of processes were based on the lines laid down by Mr. Traill.

Thereafter a new set of rules under notification no. 628/VII-569-B, dated 27th June 1894, were promulgated under which the Commissioner was constituted as the High Court of Kumaun except in the cases under Succession Act, in which he acted as a District Judge and an appeal lay to the High Court of Allahabad against his decision. The other revenue officers (e. g. Assistant Collectors) were invested with the powers to decide civil cases with varying extent of jurisdiction. The Government had however been given power under Rule 17 to make reference to the High Court of Allahabad against the decision of the Commissioner sitting as the High Court of Kumaun, and thereafter to decide the case in accordance with the opinion of the High Court. There are a number of reported cases decided by the High Court under Rule 17 of the Kumaun Rules, 1864, e. g.-

- (1) Allahabad Law Journal Reports, page 29-Niaz Ahmad vs. Abdul Hamid.
- (2) 1905 Allahabad Weekly Notes, page 91-Kumia Giro vs. Narottam.
- (3) 18 Allahabad Law Journal Reports, page 381-Nasibullah vs. Kunwar Anand Singh.
- (4) All India Reporter, 1924, Allahabad, 318-Amlanand vs. Nandu.
- (5) All India Reporter, 1925, Allahabad, 648-In the matter of Shyam Lal Sah.
- (6) All India Reporter, 1929, Allahabad, 223-Gaje Singh vs. Uchhapia.

The Commissioner of Kumaun, however, continued to exercise the powers of a High Court until the enforcement of Notification no. 543/VII -421, dated 1st April, 1926 (published at page 57 of the Rules and Orders Relating to Kumaun) when a District Judge was appointed to exercise jurisdiction over Pilibhit, and the three districts Almora, Garhwal and Nainital constituting the Kumaun Division. Later on Pilibhit was separated from Kumaun judgship. The Deputy Commissioners of the three districts were invested with the powers of a subordinate judge and Assistant Collectors who were revenue officers were empowered to try civil suits up to a valuation of rupees five thousand.

The arrangement of investing revenue officers with the powers of Civil Judges and Munsifs did not work satisfactorily after 1926 when the District Judge of Kumaun became the Appellate Court in respect of civil cases decided by them. These revenue officers not very much conversant with civil laws found that their judgments were subjected to severe criticism at the hands of the District Judge. Consequently they were shy to try civil cases which had been thrust upon them by virtue of their office as Assistant Collectors. This led to an appalling state of arrears in the disposal of civil cases. Sir Iqbal Ahmad the then Chief Justice, drew the attention of the Government to this fact. In 1942 the U. P. Government agreed to post one Judicial Officer at Almora with powers of an Assistant Collector of first class, who by virtue of his office became a Civil Judge with jurisdiction to try civil suits up to a valuation of Rs. 5, 000.

This experiment proved very successful. Consequently in 1947 the Government appointed a number of young and promising lawyers as Revenue Officers exclusively to try and dispose off civil cases. In 1952, the High Court appointed its own Munsifs and Civil Judges under Bengal and Assam Civil Courts Act.

After the merger of the erstwhile Tehri State one more Civil and Sessions Judge was posted to Kumaun under the District and Sessions Judge of Kumaun. On account of administrative convenience his Headquarters were fixed at Tehri. The District and Sessions Judge of Kumaun is also a Civil Judge of Kumaun and as such he tries and disposes off high valuation original suits. An Additional Civil and Sessions Judge is also appointed to help him whenever the workload justifies that appointment.

As regards administration of criminal justice, criminal jurisdiction was conferred on Kumaun officers in July 1817 under Regulation X of 1817 except in certain serious offences like murder, robbery, treason, etc. for the trial of which a Commissioner had to be specifically appointed by the Governor-General in Council. The Commissioner, so appointed, after recording evidence in the case, used to submit his report to the Nizamat Adalat which passed the final sentence. It seldom became necessary to appoint a Commissioner under this provision. This Regulation was subsequently repealed by Act X of 1838, as a result of which criminal courts in Kumaun came directly under the control of Nizamat Adalat. Rules were made under the Act for administration of criminal justice which were later on superseded by the Criminal Procedure Code under which the Commissioner of Kumaun was appointed as the Sessions Judge. This officer thus exercised almost despotic powers as the High Court in civil cases and as Sessions Judge in criminal cases which would be exemplified by the following incident:

An appeal was being argued before Major-General Sir Henry Ramsay, Commissioner of Kumaun, relating to a money suit. The defendant's lawyer raised a plea that the suit was barred by limitation and the decree passed was wrong. Sir Henry is said to have asked the counsel "show me the law which bars the suit". With great gusto the counsel produced his copy of the Limitation Act and opened the page containing the relevant article. On this Sir Henry tore away the particular page and remarked that 'the article of Limitation Act, relied upon existed no more.

It appears the Commissioner of Kumaun ceased to be a Sessions Judge on the enforcement of Notification no. 1314/VI-48-1914, dated 26th March, 1914 (published at page 53 of the Rules and Orders relating to Kumaun), under which the districts of Almora, Garhwal, Naini Tal and Pilibhit were placed under Kumaun Sessions Division. Later on Pilibhit was removed from the jurisdiction of the Kumaun Sessions Court.

Kumaun was throughout a Scheduled District and Government exercised powers to frame rules and issue notifications under section 6 of the Scheduled Districts Act. It also extended the provisions of certain Acts to Kumaun under section 6 of the Act.

The Government continued to exercise its rule-making powers till 1935 when the Scheduled Districts Act was repealed. It was then for the first time that the laws promulgated by the Legislatures of the country applied to the Area of their own force, but the rules framed under the Act, and notifications issued thereunder remain operative until these are replaced by appropriate Acts of the Legislature, e. g., the

Kumaun Nayabad and Waste Land Rules were replaced by the Kumaun and Nayabad and Waste Land Act (U. P. Act XXXII of 1948).

It may not be out of place to mention that under a U. P. Government Revenue (C) Department Notification, dated 24th February, 1960, a new division styled Uttarakhand has been carved out of the territories within the limits of the erstwhile Kumaun Division. Pithoragarh, Chamoli and Uttar Kashi tahsils of Almoda, Garhwal, and Tehri districts respectively, have been upgraded into three districts which together constitute the Uttarakhand Division. The object was to have an integrated pattern of administration in the border area on the lines of North-Eastern Frontier Agency where the District Magistrate is the head of "all the Departments and is directly responsible to the Chief Secretary of the State who functions as the Commissioner of the Division. The arrangements ensured quicker implementation of the policies of the Central Government which is naturally interested in the political administration of the area which touches China, Tibet and Nepal.

These political changes under Executive orders have not at all affected the pattern of administration of civil and criminal justice in Kumaun as the District and Sessions Judge of Kumaun (assisted by the Civil and Sessions Judges of the Tehri and Kumaun) continues to exercise jurisdiction over entire area comprising Kumaun and Uttarakhand Divisions, like all other District and Sessions Judges in the State.

The people of these two divisions enjoy the fundamental rights assured to every citizen of India under the Constitution and look upon the Allahabad High Court for the protection and enforcement of those rights.