

The Death of Sir JOHN BUDD PHEAR, Kt., Late Chief
Justice of Ceylon.

Monday, April 10, 1905.

Present :—The Hon. Sir CHARLES PETER LAYARD, Kt., C.J.,
and the Hon. FREDERICK CHARLES MONCREIFF, P.J.

BEFORE beginning the work of the day the Chief Justice,
addressing the Solicitor-General, as representing the Bar, said:—

Mr. SOLICITOR,—Before we commence the work of the day, I
desire to express the great regret with which this Court has
read the announcement of the death of Sir John Budd Phear,
one of the most distinguished of my predecessors.

Unfortunately for his contemporaries and for the Colony at
large he did not continue very long as Chief Magistrate of this
Island. During the short time he presided on the Bench he won
the respect and regard of his colleagues and of the whole body
of the legal profession, by whom he was much beloved.

His sterling ability and unflagging industry were his most
remarkable characteristics, and his kindness to the younger
members of the Bar will ever be remembered by those who had
the good fortune to come into direct contact with him.

He earnestly endeavoured to eradicate from our procedure
fictitious causes of action, and the subsequent over-ruling of his
dicta on that point I, for one, have ever regretted.

Though he has passed away, his lucid and clear expositions
of the law have left an indelible mark in the administration of injustice
in this Colony.

Mr. RAMANATHAN, K.C., C.M.G., said:—

My LORD,—On behalf of the Bar, and for myself, I can only
say that you have accurately described the qualities of the late
Sir John Budd Phear. He was indeed one of the most distin-
guished Judges that ever graced the Bench of the Supreme Court.
He occupied a great position in India, not only as a Judge of
the High Court of Calcutta, but also as a man of great public
spirit who took an abiding interest in the welfare of the natives
of the country. He was deeply appreciated in India. On resign-
ing his appointment there, he accepted the office of Chief Justice
of this Island. That was in 1877, nearly eight and twenty years
ago. I was then comparatively young at the Bar.

One of the first services he rendered to the profession was the institution of a weekly publication of authorized reports of cases decided in appeal by the Supreme Court. He found that the Judiciary of the Island went without authorized law reports, and that it was not unusual in those days for Judges to hear cases elaborately argued, only to find later on that the very points involved in them had been argued before and determined by earlier Judges. The minor Magistrates also had no opportunity of becoming familiar in proper time with the decision of the Appellate Court. Sir John corresponded with the Government and brought about the publication of the *Supreme Court Circular*. I was selected by him in 1878 as its first editor. His scheme still lives in the present *New Law Reports*.

Another service earned for him speedily the gratitude of the whole Island. At the time he assumed office the Supreme Court had gone greatly into arrears. Cases sent up in appeal lay undisposed of for eighteen months, much to the inconvenience of suitors. Sir John Phear addressed himself to the task of rendering speedy justice in appeal, even as you, my lord, with the help of your colleagues, are endeavouring in these days. He introduced the routine of Appellate Judges sitting almost every day in the week. By assiduous work he cleared off all arrears in the course of eighteen months, which contributed not a little to the peace of the country and to the elasticity of trade in the Island.

Another service, the highest and best in the estimation of the Bar, was his training of the Bar and his demonstrating to it the truth that the so-called "uncertainty of the law" is nothing more than the uncertainty of ill-trained Judges as to the true facts of the case and the proper principles of law applicable to it. In those days your lordship, who was practising at the Bar, will remember the state in which the Bar was, for want of good example in the art of pleading. Sir John severely condemned inaccurate statements of facts, and was ever on his guard against the colouring given to a case by inconclusive arguments. He cared naught for the opinions of counsel. He would accept, facts and legal principles only. He trained the members of the Bar to be not only accurate in regard to the facts of the case, but also guarded in the expression of opinions. He had a way all his own of manifesting errors of thought and faults in reasoning. Above all, he made the Bar argue cases upon first principles of law. Before his advent, legal principles were of little avail in the determination of a case unless supported by a judgment of a competent Court here or in England. After Sir John's arrival, if in arguing a case an advocate cited a decided case without going into first

principles, his lordship would say, "I do not want authorities; let us solve this case even as a mathematician would solve a problem, by applying the axioms and propositions we have learned in our books." Advocates were thus encouraged to look up the first principles of law applicable to the case and to carefully apply them.

Sir John Phear would often help them in the art of applying principles to facts. If they passed on to authorities too speedily, he would say: "We do not want authorities just yet; they are only of corroborative value. Let us solve the question by the proper application of first principles, and then look into authorities to discover whether our conclusions on first principles are corroborated by them." In this way first principles became paramount. Before his time legal principles had become so elastic and uncertain by pronouncements from the Bench that it was difficult to advise clients. During Sir John Phear's time these difficulties disappeared. Lawyers were able at the outset almost to prophesy what would be the result of a case in appeal. Training such as this one can never forget, nor cease to be grateful for.

The grandeur of Sir John Phear's intellect and character is universally recognized at the Bar. They deeply regret his death, and will be pleased if the sympathy of the Bench and Bar could be conveyed at once to the family of Sir John Phear.

The Chief Justice directed that a note of these proceedings be made in the minutes of the day, and a copy thereof forwarded to Miss Phear.
