

Sir Francis Piggott: Chief Justice in His Own Cause

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THE early volumes of the Hong Kong Law Reports are enlivened by the vigorous, sometimes outspoken judgments of Sir Francis Taylor Piggott, Chief Justice from 1905 to 1912. There have been twenty Chief Justices in British Hong Kong, and Piggott was the most learned and prolific in extrajudicial writings. He was also, in the formidable company of Mr J W Hulme and Sir John Smale in the nineteenth century, one of the most controversial. His rather tempestuous career provides a useful vehicle for exploring one uncharted region of Hong Kong's legal history and illustrates several issues of constitutional interest.

Early life

Francis Taylor Piggott was born on April 25, 1852. His father, Revd Francis Allen Piggott,¹ was a curate who became principal of Worthing College; his mother, daughter of Dr John Hollamby Taylor, died at the time of his birth. The young Francis went to school in Paris, thus achieving the fluency in French which was a necessary qualification for his appointment to the colonial civil service in Mauritius; he later attended Worthing College. Despite his father's death in 1871 he was able to complete his education at Trinity College, Cambridge, finally graduating MA, LL.M. He was called to the Bar (Middle Temple) in 1876. Five years later he married Mabel, eldest daughter of Mr Jasper Wilson Johns (Liberal MP for Nuneaton) in a double wedding ceremony with Mabel's sister Eva and Robert Price, who became Liberal MP for East Norfolk and was later knighted.²

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¹ Like his son, Francis Allen Piggott was a sizar (a student at Cambridge paying reduced fees) at Trinity; BA 1843, MA 1846; deacon (Chichester) 1843, priest 1844; curate of the Chapel of Ease, Worthing, 1843-4, of Holy Trinity and St Mary's, Guildford, 1846-9, of West Hackney, Middlesex, 1850, of Broadwater, Sussex, 1854-9; Principal of Worthing College, 1860-71. Died Jan 1, 1871, aged 51, at Worthing. See J A Venn (ed), *Alumni Cantabrigienses, Part II: From 1752 to 1900* (Cambridge, 1940-54).

² See F S G Piggott, *Broken Thread* (Aldershot: Gale and Polden, 1950) *passim*.

Piggott had already begun his career as an author, having published in 1879 his *Foreign Judgments: Their Effect in the English Courts*.³ In 1884 he revised and enlarged this volume, and in the following year he produced a book on the law of torts. He was also practising at the Bar and seeking to bring himself to official attention.

Conference on private international law

In Foreign Office records of the 1880s there are several confidential prints concerning initiatives taken by Piggott in the field of private international law. The first relates to a proposed conference for a treaty with Italy on the recognition of foreign judgments. Sir Julian Pauncefote, formerly Attorney General in Hong Kong and at that time Permanent Under-Secretary of State for Foreign Affairs,⁴ had in 1884 sent to Piggott some papers on international law, and their recipient suggested a meeting in Rome. 'I feel sure that your Lordship will attribute to me a motive higher than mere arrogance when I say that I believe I could be of some service in assisting to bring about the end which is so much to be desired. . . . I would ask your Lordship also to believe that personal aggrandisement or reward is not the first object I have in view in this matter.'⁵ Several letters followed to various individuals, including the Prime Minister, urging that the conference be held, until eventually Piggott prepared a draft convention and forwarded it to the Foreign Office. In September 1887 he was authorised to proceed to Rome as a

This book is an autobiography by Francis Taylor Piggott's elder son. Mabel Piggott died, in her 92nd year, in 1949, surviving Sir Francis by twenty-four years and one day. She seems to have been a capable woman, mainly remembered for her founding of the Colonial Nursing Association, which she describes in "You Would Hardly Believe It" (1910) 68 *Nineteenth Century and After* 148.

³ See appendix below.

⁴ Pauncefote was in private practice in Hong Kong 1863-73, being also Attorney General 1866-72 and member of the Executive and Legislative Councils. It may be that he used his influence to have Piggott selected for the Chief Justiceship of Hong Kong in 1904, a post he had himself intermittently filled whenever the incumbent was on leave. Pauncefote was a friend of Wu Ting-fang, to whom Piggott appealed when seeking a position in China (p 282 below). See also R B Mowat, *The Life of Lord Pauncefote* (London: Constable, 1929) ch 3.

⁵ Piggott to Granville, Sept 17, 1884; No 22, Foreign Office Confidential Print No 5092, April 1885 (*Papers Respecting the Codification of Private International Law, 1882-1884*): FO323/7. This confidential print, and its continuation (*Further Papers* . . .), also in FO323 7, provide the source for the other facts in the text relating to this aspect of Piggott's early career.

jurist engaged by Her Majesty's Government to discuss his draft, but nothing came of it (due to opposition from Bismarck) except a payment to Piggott of £364.12.0 as fees. Similarly, a Bill for the more speedy execution in the United Kingdom of judgments obtained in Indian and colonial courts, submitted by Piggott on October 5, 1885, was not proceeded with. In 1887 he raised this matter at a colonial conference in London and the general principle that something should be done was approved.⁶

These attempts at reform failed in their immediate object, but their author's name was at least placed before influential officials. When the Japanese government requested the British to recommend an adviser to assist with the drafting of a new constitution, Sir Julian Pauncefoot suggested Francis Piggott.⁷

Constitutional adviser in Japan and the Behring Sea arbitration

On November 17, 1887 Piggott left England on a three-year appointment to Japan. His task was to advise the Japanese Prime Minister, Count Hirobumi Ito, on certain aspects of English common law which might be relevant to the proposed new Meiji constitution.⁸ The outstanding feature of this document, he said, was its purely Japanese character; his role and that of the other foreign advisers was to be available as 'living books of reference.' His only contribution to the preparation of the constitution was the elucidation of various points of law.⁹ Piggott's time in Japan aroused a life-long interest in that country and an apparently genuine friendship with Ito. Piggott published three books on the aesthetic side of Japanese life; he assisted in founding the Japan Society of

⁶ See Lugard to Harcourt, No 217, June 2, 1911: CO129/378. Piggott continued to urge reform in this area, as indicated by *ibid* and *Hong Kong Hansard 1908* 13. See also appendix item 46.

⁷ Piggott was at this time, recalled Sir W E Davidson in 1913, a very hard-working barrister who was struggling to get on: minute on Price to Grey, private, Jan 8, 1913: FO371/1614 (1164).

⁸ See H J Jones, *Live Machines: Hired Foreigners and Meiji Japan* (Vancouver: University of British Columbia Press, 1980).

⁹ *Broken Thread*, *op cit.* 7, and Piggott's article 'The Ito Legend: Personal Recollections of Prince Ito' (appendix item 19). The literature concerning the drafting of the Meiji constitution does not refer to whatever contribution Piggott may have made. See George M Beckmann, *The Making of the Meiji Constitution* (Lawrence, Ks: University of Kansas, 1957) ch 6 and George Akita, *Foundations of Constitutional Government in Modern Japan 1868-1900* (Cambridge, Mass: Harvard UP, 1967) ch 4.

London; he subsequently visited the country many times, being received by the emperor on his last trip in 1911; and his first son became a Japan specialist in the British army.¹⁰

Returning to England early in 1891 Piggott prepared various works for publication and probably resumed private practice of the law. He obviously had a taste for official life, though, and went to Paris as secretary to the Attorney General, Sir Charles Russell, for the Behring Sea arbitration. This was an ad hoc appointment for which he received only expenses, subsistence allowance and gratuity.¹¹ The basic issue posed by the Behring Sea dispute — the freedom of the seas — was the subject of Piggott's researches after his retirement.

Appointment to Mauritius

At the end of 1893 Piggott was offered the post of Procureur- and Advocate-General of Mauritius (equivalent to Attorney General). He accepted and thus, at the relatively mature age of 41, he embarked on a new career with the colonial civil service which was to end with his reluctant retirement from Hong Kong in 1912.

In what was to become characteristic, Piggott's name first prominently appears in the Mauritius despatches in relation to a dispute. He had disagreed with the Governor and the Executive Council and had refused to argue a test case before the courts or to promote legislation which he disliked.¹² Yet after this incident, when the ruling on principle went against him, he apparently settled down for some years to a fairly quiet life of hard work. In his spare time he wrote his first novel under the pseudonym of Hope Dawlish. He was intensely ambitious, aspiring to promotion in the administrative rather than the legal branch of the service. Despite being told personally by the Secretary of State for the Colonies, Mr Joseph Chamberlain, in 1898 that he should not hope for an administrative post, he frequently applied to be transferred. In 1901 the Governor of Mauritius sought to appoint Piggott as Acting Colonial Secretary, but opinion in the Colonial Office was firmly opposed:

¹⁰ *Broken Thread*, op cit. passim. Major-General Francis S G Piggott died in 1966. His brother was named Julian Ito after their father's patron in the Foreign Office and employer in Japan.

¹¹ Minute by Davidson on Price to Grey, private, Jan 8, 1913: FO317/1614 (1164).

¹² Jerningham to Ripon, confidential, Sept 7, 1894: CO167 683.

'I do not think Mr Piggott would be suitable for the office of [officer administering the government]. He is not tactful and is very unpopular with the French element. I think he would be unable to manage the Council of Government at all successfully. It would moreover give Mr Piggott a handle for pressing us to make him a Governor which he has been very anxious we should do.'¹³

Piggott was not daunted by his rejection: he appealed against the decision and again sought a gubernatorial appointment. He did not, he wrote, profess to be a rich man: 'During the years I have lived in Mauritius, which have been years of unremitting labour, I have had to sacrifice domestic comfort and social entertainment to the superior claims of the education of my two boys.' That part of his private duty was nearly accomplished, and if it be his good fortune to be appointed to a governorship, 'I believe that I shall not be an unsuccessful administrator, and I can assure the Secretary of State that the social position which it is so important for a Governor to maintain, will not suffer any loss of dignity at my hands.'¹⁴ He was soon afterwards offered the post of Attorney General in British Guiana. He initially accepted but later, to the consternation of Colonial Office clerks, declined the appointment.¹⁵ In June 1903, with the support of his chief in Mauritius, he applied for the governorship of Sierra Leone. He was again disappointed. The Legal Assistant Under-Secretary minuted that Piggott was industrious and enthusiastic and possessed wide knowledge, but he was inaccurate at times and disliked the legal duties which were his primary responsibility and which he scarcely carried out anyway. 'He is as ambitious and persistent as anyone I know and he is unfortunately inclined to want of tact.'¹⁶ In reply, Piggott catalogued the administrative tasks he had undertaken and once more

¹³ Minute by Bertram Cox, Aug 15, 1901, on Bruce to Chamberlain, private, July 13, 1901: CO167/740.

¹⁴ Piggott to Bruce, Sept 6, 1901, enclosure in Bruce to Chamberlain, secret, Sept 6, 1901: CO167/741. See also Piggott to Cox, private, Dec 8, 1901: *ibid.* Chamberlain's reply to Bruce on Oct 24, 1901, *ibid.* was as usual: that Piggott must look for promotion in the legal branch of the service and that his name would be considered when suitable vacancies occurred.

¹⁵ Bruce to Chamberlain, tel, Feb 26, 1902: CO167/748; minutes on Bruce to Chamberlain, tel, Mar 13, 1902: CO167/749.

¹⁶ Minute by Cox on Bruce to Chamberlain, confidential, June 4, 1903: CO167/758.

unsuccessfully sought reconsideration.¹⁷

His persistence in applying for governorships irritated the Colonial Office but did not materially affect his prospects of promotion to a colonial judgeship. He had been offered the post of Chief Justice of the Leeward Islands but turned it down, and in February 1904 he also declined appointment as a puisne judge in the Straits Settlements:¹⁸ indeed, he took the offer of such a lowly position as a personal insult.¹⁹ When, the following month, he applied for the governorship of the Seychelles he was thought to be almost wanting in courtesy to the Secretary of State in seeking a promotion he had repeatedly been told could not be his.²⁰ Nevertheless he continued to protest against the lack of official recognition of his services²¹ and even applied once more for the governorship of Sierra Leone on the curious ground of impaired health. The Secretary of State warned that repeated applications could not fail to produce an unfavourable impression and damage his future prospects.²²

Appointment to Hong Kong

In December 1901 Piggott expressed his disappointment at not being made Chief Justice of Hong Kong. 'I confess that, if words have any meaning, I was under the impression that I was to have the next CJship.'²³ His wife had previously written to Mrs Chamberlain: 'We are both devoted to the Far East and of all Colonies, Hong Kong is the one we should have liked to live in.'²⁴ Two years later Bertram Cox in the CO minuted: 'Personally while I admire his energy I do not think that his abilities are such as to justify our promoting him to so high a post as that of Chief Justice of Hong Kong, Ceylon or Jamaica

¹⁷ Piggott to Bruce, Oct 8, 1903, enclosure in Bruce to Lyttelton, confidential, Oct 10, 1903; CO167/759. Bruce spoke of the exceptional nature of Piggott's services and commended him for the Secretary of State's most favourable consideration.

¹⁸ Bower to Lyttelton, tel, Feb 26, 1904; CO167/765.

¹⁹ Piggott to Bower, Mar 7, 1904, enclosure in Bower to Lyttelton, No 87, Mar 10, 1904, *ibid*. One clerk minuted: 'Mr Piggott appears to have a capacity for feeling himself insulted almost Gallie.' In a fit of pique, Piggott sought to resign as chairman of the Woods and Forests Board; Bower to Lyttelton, tel, Mar 7, 1904; *ibid*. Bertram Cox thought this action was improper, and noted the difficulty of granting him promotion in the legal service when he persisted in 'standing in his own light.'

²⁰ Bower to Lyttelton, tel, Mar 26, 1904; *ibid*.

²¹ Bower to Lyttelton, confidential, Apr 26, 1904 and enclosures; CO167 766.

²² Lyttelton to Bower, confidential, May 23, 1904; *ibid*.

²³ Piggott to Bertram Cox, private, Dec 8, 1903; CO167 741.

²⁴ Mabel Piggott to Mrs Chamberlain, private, Nov 7, 1901; *ibid*.

over the heads of men of equal ability whose service has been longer."²⁵ When, in December 1904, consideration was being given to Sir William Meigh Goodman's successor, the Governor's recommendation was the Attorney General, Sir Henry Berkeley, who had previously been Chief Justice in Fiji and who had acted in that position in Hong Kong. Neither Berkeley nor Piggott was favoured, opinion in the Colonial Office supporting the claims of the Attorney General of Jamaica. Nevertheless the Secretary of State, Mr Alfred Lyttelton, chose Piggott. No reasons were given.

At that time Piggott was suffering a severe attack of malaria and 'brain trouble,' following three and a half vacationless years of what he termed overwork in Mauritius.²⁶ After sorting out various business affairs in England he and his wife embarked for Hong Kong, arriving in Japan on April 24, 1905 and meeting his former employer, Marquis Ito. The newly knighted Piggott first took his seat on the Bench in Hong Kong on May 25, 1905.²⁷

In those days the Chief Justice was not provided with official accommodation and the Governor, Sir Matthew Nathan, invited the Piggotts to stay at Mountain Lodge,²⁸ his summer residence on the Peak. They arrived on June 26, 1905, not leaving until nearly a year later. Nathan's successor, Sir Frederick Lugard, alleged that by the end of Nathan's period in office the Governor and the Chief Justice were not even on speaking terms.²⁹ Initially, however, all was well: Nathan wrote to his mother that the Piggotts were 'very nice people' and 'pleasant guests' to whom he later offered the house for the winter.³⁰ But the Piggotts apparently overstayed their welcome and then sent Nathan a bill for the coal they left behind in the cellar!³¹ At some stage there was a complete break between Nathan and Lady Piggott, though the details are obscure.³²

²⁵ Minute dated Nov 19, 1903 on Bruce to Lyttelton. confidential, Oct 10, 1903: CO167/759.

²⁶ Piggott to Nathan, June 19, 1905, enclosure in Nathan to Elgin, No 211, Aug 23, 1906: CO129/335.

²⁷ See South China Morning Post, May 26, 1905, for details of the welcoming ceremony.

²⁸ See Katherine Mattock. *This is Hong Kong: The Story of Government House* (Hong Kong: Hong Kong Government, 1978) passim.

²⁹ Lugard to Crewe. No 65, Mar 11, 1909: CO129/355.

³⁰ Nathan to Mrs Nathan. No 52, July 11, 1905; No 57, Aug 8, 1905; No 63, Sept 19, 1905: MS Nathan 117 (Bodleian Library, Oxford).

³¹ Minute by Bertram Cox. June 25, 1910: CO129/374.

³² See MS Nathan 342, pp 152-80. Certainly Lady Piggott seems to have been

The Hong Kong Law Reports and other initiatives

One of the first initiatives undertaken by the new Chief Justice was the establishment of proper law reports. The previous practice was to rely almost exclusively on reports of cases in the newspapers, which were prepared by journalists after obtaining the manuscripts of judgments. Since there were no shorthand writers attached to the court, unwritten judgments could not be accurately recorded. Piggott's proposal envisaged the employment of both an official stenographer and a local barrister to edit the judgments and arrange for their printing. Nathan provided \$2,000 for this purpose, less than half the tender submitted by the publisher of a fledgling newspaper, South China Morning Post, Limited.³³ Thus was the invaluable Hong Kong Law Reports series established.³⁴

With the exception of law reporting, however, virtually all of Piggott's efforts at reform were defeated. 'When I came to the Colony,' he later protested, 'I found the Supreme Court in a state of most lamentable inertness and far below its proper standard of efficiency as the Supreme Court of so important a Colony: laissez faire and laissez aller seemed to be the chief features of the administration of justice.' But his attempts to improve the institution were met with 'steady and continuous refusal of assistance.'³⁵ One of his first proposals was three-fold: an increase in the number of Supreme Court judges from two to three, the holding of criminal sessions bi-monthly instead of monthly, and provision of an allowance to support a private secretary for the Chief Justice.³⁶ None of these requests was granted. He made numerous representations about leave provisions, but without success;³⁷ he compared his salary with

difficult at times: see Nathan to Mrs Nathan, No 106, July 14, 1906, and No 140, Feb 18, 1907; MS Nathan 18.

³³ Piggott to Nathan, June 3, 1905, and Nathan to Piggott, June 26, 1905, enclosures in Nathan to Elgin, confidential, May 23, 1906; CO129/334.

³⁴ For more information on law reporting in Hong Kong see Wesley-Smith, 'Legal Literature in Hong Kong' (Hong Kong: Centre of Asian Studies, 1979) paras 112 and 115-11.

³⁵ Piggott to Lugard, Mar 23, 1909, enclosure in Lugard to Crewe, No 97, Apr 16, 1909; CO129/356.

³⁶ Nathan to Elgin, confidential, May 23, 1906; CO129/334; Nathan to Elgin, confidential, Sept 7, 1906; CO129/355. Piggott wanted a young Englishman as his clerk 'who would do the 101 things which interfere with more serious work': MS Nathan 336.

³⁷ Piggott to Antrobus, private, Apr 12, 1906; CO129/347; Nathan to Elgin, No 211, Aug 23, 1906; CO129/335; Lugard to Crewe, No 111, Apr 25, 1908; CO129/347; Lugard to Crewe, No 326, Nov 8, 1909; CO129/358.

the more handsome remuneration enjoyed by the judge of the Supreme Court at Shanghai,"³⁸ though failing to provoke for himself a raise; and his observations on the effect that fluctuations in the silver market were having on salaries were termed 'sheer undiluted drivel.'³⁹ In February 1908 he applied again for a governorship. One of the qualities he claimed to possess was 'great tact,' but A I Harris in the Colonial Office minuted: 'Only the most unmistakable snub is likely to have any effect on such a man — and he fully deserves to receive it.'⁴⁰ He was to receive many snubs thereafter, but none unmistakable enough, for in April 1910 he sought appointment as Chief Justice of Ceylon.⁴¹ This was not taken seriously.

The Eyrie

Upon leaving Mountain Lodge, Sir Francis and Lady Mabel Piggott took a lease of a house nearby named The Eyrie. Piggott wanted to sub-let the house to Ho Tung, the wealthy former comprador of Jardine, Matheson & Co, for three months while he took leave. There was an obstacle, however, in the form of the notorious Hill District Reservation Ordinance,⁴² which had been passed in 1904 to prevent Chinese from living on the Peak — unless they were respectable enough to buy their own property there or were servants, licensed chair coolies or other species of local denizen generally useful to the white man. Under section 4, the Governor in Council could exempt any Chinese from the operation of the ordinance 'on such terms as the Governor-in-Council shall think fit.' No exemption was made in respect of Mr Ho Tung when, in 1908, the Chief Justice was tenant of the house which Ho Tung wanted to rent.

Lugard's despatch reveals a rather prim and racist attitude on the part of the Governor. Although, as Austin Coates has recently pointed out, Ho Tung looked far more like George

³⁸ Lugard to Elgin, No 220, Aug 31, 1907: CO129/341. Compare his letter disputing the levy of income tax on an advance of salary: Piggott to Under-Secretary, Mar 17, 1905: CO129/327.

³⁹ Minute by Stubbs on Piggott to Under-Secretary, Apr 17, 1910: CO129/374. See also Piggott's correspondence with the Governor concerning control over police prosecutions, preparation of Bills and appointment of an Assistant Attorney General: May to Crewe, confidential, Aug 31 and Sept 7, 1910: CO129/368. Again, none of Piggott's proposals was accepted.

⁴⁰ See enclosure in Lugard to Elgin, confidential, Mar 3, 1908: CO129/346.

⁴¹ Piggott to Crewe, Apr 17, 1910: CO129/374.

⁴² No 4 of 1904.

Bernard Shaw than a prosperous Chinese businessman,⁴³ the Executive Council accepted that he must be considered Chinese (or, technically, not non-Chinese); therefore he could only live on the Peak above the 788 foot contour line if he bought his own property and lived in it (which he had in fact done two years earlier) or was granted exemption in order to reside in premises owned by someone else. The Eyrie overlooked and dominated Mountain Lodge, and thus the Governor would, in the eyes of ignorant Chinese, be subordinate to whoever made it his home. This objection, wrote Lugard, 'was emphasized by the fact that the proposed tenant was an illegitimate half-caste whose wives and Concubines numbered four.'⁴⁴ This was just seven years before Ho Tung was knighted by the King.

Piggott claimed that the Governor in Council's refusal to exempt Mr Ho Tung was illegal because not exercised reasonably. Two reasons had been given for the decision but neither was sufficient. If the government intended that no Chinese should live in The Eyrie, exclusion was absolute in respect of that house and this was not authorised by the ordinance; if the government intended only that this particular Chinese should not live there, the decision was arrived at in misconception of the facts and was thus unreasonable and illegal.⁴⁵ But the Colonial Office did not doubt the legality of the Governor's action and did not interfere. The power of exemption under section 4, the Secretary of State ruled, could not be coupled with any kind of legal duty. But Piggott protested:

'With deference I cannot acquiesce in the advice which has been given to the Secretary of State; it is, I believe, entirely contrary to the fundamental principle which has been laid down in a long series of decisions that . . . if a discretion

⁴³ *Whampoa: Ships on the Shore* (Hong Kong: South China Morning Post, Ltd. 1980) 158.

⁴⁴ Lugard to Crewe, confidential, June 4, 1908: CO129/347. For further information on Ho Tung and his domestic arrangements see Jean Gittins, *Eastern Windows — Western Skies* (Hong Kong: South China Morning Post, 1969) and Irene Cheng, *Clara Ho Tung: A Hong Kong Lady, Her Family and Her Times* (Hong Kong: Chinese University of Hong Kong, 1976). The figure of *four* wives and concubines is probably false: according to Irene Cheng, Ho Tung had two 'equal wives' (p'ing ts'ai) and one concubine.

⁴⁵ Piggott to Lugard, May 27, 1908, enclosure in Lugard to Crewe, confidential, June 4, 1908: CO129/347. Piggott claimed that the government was seeking to achieve by a side wind what it should do more legitimately, by purchasing the property. It seems that Piggott had an ulterior motive which he was himself pursuing by means of a side wind: he wanted the government to buy The Eyrie as a residence for the Chief Justice.

is vested in any authority, the exercise of that discretion is subject to the legal duty to exercise it in a reasonable and not in an arbitrary manner; and that the action taken can only be justified if a reasonable explanation can be given.⁴⁶

The Chief Justice had wanted the question referred to the Law Officers of the Crown, since the Colonial Office decision was taken on the advice of legal authorities whom he did not recognise as superior to himself. He went further, suggesting that it was unconstitutional for the government to decide in its own favour a legal dispute with one of its servants; this was especially so when one party was a judge unable to go before the courts as a litigant. 'With deference this puts the Chief Justice in the position of being without legal redress, contrary to the Charters of liberty.'⁴⁷ But both reference to the law officers and submission to friendly arbitration were denied, and the Secretary of State emphatically refused to receive further communications on the subject.

The status of the Registrar of the Supreme Court

In March 1908 Piggott reported Mr Arathoon Seth, Registrar of the Supreme Court, to the Governor for insubordination and complained of the conduct in this matter of the Colonial Secretary.⁴⁸ Once again, neither the Governor⁴⁹ nor the Secretary of State supported the Chief Justice. The Attorney General (and Piggott's successor in office), Mr William Rees-Davies, disagreed with Piggott's view that the Registrar was subject to control by the Chief Justice in the performance of all his official duties.⁵⁰ One year after his initial complaint Piggott wrote to Lugard that the necessity of Seth's retirement was urgent.⁵¹ The Secretary of State pronounced:

'... I am strongly of opinion that the present absence of good relations between the Government and the Chief Justice is entirely due to the attitude which Sir Francis

⁴⁶ Piggott to Lugard, June 20, 1909, enclosure 1 in Lugard to Crewe, confidential, Feb 12, 1909: CO129/355.

⁴⁷ *Ibid.*

⁴⁸ Piggott to Lugard, Oct 5, 1908, enclosure 1 in Lugard to Crewe, No 263, Oct 15, 1908: CO129/348.

⁴⁹ Lugard thought Piggott's position contrary both to established usage in the colony and to general principles of administration: see Lugard to Crewe, No 154, June 11, 1908: CO129/347.

⁵⁰ Enclosure in Lugard to Crewe, No 247, Sept 23, 1908: CO129/348.

⁵¹ Piggott to Lugard, Mar 23, 1909, enclosure in Lugard to Crewe, No 97, Apr 16, 1909: CO129/356.

Piggott has thought fit to take up. I would add that if the Chief Justice continues to be dissatisfied with the conditions under which he holds office, it is open to him at any time to terminate his connexion with the public service.⁵³

The jurisdiction of the Hong Kong courts

On one issue in particular, Sir Francis Piggott's failure to win approval for his views must have been especially humiliating. Harry H Fox, Consul General at Canton, refused to accede to a request by the Supreme Court to transmit a writ of summons to the 'Namhoi magistrate' for service on a Chinese defendant in China. Section 42 of the Code of Civil Procedure,⁵³ as does order 11, rule 1 of the present Rules of the Supreme Court, purported to authorise service out of the jurisdiction in certain situations where some element of intraterritoriality was present.⁵⁴ Fox denied that the Hong Kong legislature was competent to claim jurisdiction where Chinese in China were concerned. Piggott insisted that any question as to the jurisdiction of the Hong Kong courts was for Hong Kong judges to determine. But both the Colonial Office and the Foreign Office disagreed with the learned author of *Exterritoriality and Service Out of the Jurisdiction* and upheld the stand taken by the Consul General.⁵⁵

At about the same time, Piggott CJ was developing in the court room his radical theory that non-disallowed ordinances of the Hong Kong legislature could not be challenged on the ground of extraterritorial operation.⁵⁶ This novel approach — which argues that the Queen's non-disallowance of an ordinance from a ceded colony cures any alleged defect of extraterritoriality — would, if accepted, have provided a complete answer to Harry Fox's objections.

Executive disapproval of judicial pronouncements

It is already clear that Piggott as Chief Justice had no capacity for maintaining good relations with governors. Sir Frederick Lugard complained to the Colonial Office that, prior

⁵³ Crewe to Lugard, May 25, 1909: CO129/355.

⁵⁴ Ordinance No 5 of 1901.

⁵⁵ See Langley to Colonial Office, No 42629 08, Dec 21, 1908: CO129 353.

⁵⁶ See Foreign Office to Colonial Office, No 43871 08, Dec 21, 1908; *ibid*: Lugard to Crewe, No 75, Mar 18, 1909: CO129 355; Langley to Colonial Office, No 19786/09, July 26, 1909: CO129/362.

⁵⁷ See Wesley-Smith, 'Extraterritoriality and Hong Kong' [1980] PL 150, 162-6.

to Piggott's arrival in Hong Kong, governors had frequently taken advantage of the 'ready and willing counsel' of the Chief Justice in matters of large public importance; but with Piggott, governors were reduced to indulging in interminable and time-wasting correspondence instead.⁵⁷ For his part, Piggott lamented to Lugard that 'on no single question small or large, official or quasi-official, since Your Excellency has been in the Colony, has Your Excellency agreed with me.'⁵⁸ Lugard's official disagreements, and references to the Colonial Office, even extended to the Chief Justice's judgments from the Bench.

Piggott's unreported judgment in *Lugard v Chu Ping* (1909) was sent to London with the plaintiff's regret that the Chief Justice had criticised the government so strongly, 'and in doing so should have chosen the expressions which he has used, which are calculated to lower the dignity of the Government in the eyes of the Chinese who do not appreciate our ideas of the mutual relations between the judiciary and the Executive.'⁵⁹ It can be doubted whether Lugard himself appreciated 'our' ideas. The passages to which the Governor most objected are worth quoting from at some length, for they contain clear and forthright statements of principle which governments are prone to forget. The complicated facts of the case, which concerned the rights of marine lot holders in relation to the praya reclamation, do not need elaboration for the following dicta to be understood.

'Works which interfere with individual rights in the public interest can only be undertaken by legislative authority; and every step should be specially authorised. . . . I am bound to point out that the Executive has no right to embroider on to what the Legislature has provided other documents of their own devising.

. . . I have been trained in the strictest school of constitutional law, more especially in its application to Crown Colonies; a Legislature has been provided, and the rights of that Legislature must be respected even in the smallest detail. Further, in this case the rights of individuals were being dealt with, and the greatest circumspection was necessary on the part of the Govern-

⁵⁷ Lugard to Crewe, No 65, Mar 11, 1909: CO129/355.

⁵⁸ Piggott to Lugard, Feb 13, 1909: enclosure in Lugard to Crewe, No 66, Mar 12, 1909: *ibid*.

⁵⁹ Lugard to Crewe, No 203, July 15, 1909: CO129/357.

ment and its officers that everything should be done regularly. I have no notion of a Government passing an Ordinance, and then acting autocratically, as if no Ordinance had been passed and doing what it thinks fit.

. . . Of course those Governors thought they were acting, and intended to act, in what they conceived to be the best interests of the Colony; but nothing justifies independent action on the part of a Governor when he has to deal with the rights of individuals and the rights of the Government. He has a Legislature to fall back on, and in all cases of doubt he is bound to consult it, or if prompt action is considered by his advisers to be essential, then he is bound to come to the Legislative Council afterwards to ratify what he has done. The grant of a Legislature to a Colony however small is part of the great constitutional system which pervades the Empire: the fact that there is a permanent Government majority does not alter the constitutional principle, which the very existence of the Legislature implies, that everything must be done regularly and in order; and if anything is done irregularly and out of order those officers who so act, the highest or the lowest, must take the consequences. And in the case of this agreement, and indeed of almost every act of the then Government in this matter, the Ordinance has been treated as waste paper, and the Legislature as non-existent.'

To its credit, on this issue the Colonial Office did not share Lugard's concern but recognised that a Chief Justice is justified in using strong words when he detects illegality by the government.⁶⁰

The court vacation and the right to trial by jury

Under the Supreme Court (Vacations) Ordinance 1898⁶¹ the periods of vacation could be varied by rules made by the Chief Justice and approved by the Legislative Council. In September 1907 Sir Francis Piggott drafted a rule of court extending all the court vacations; the long vacation was to be increased by 42 days, and Lugard asked the Chamber of

⁶⁰ See also Lugard's questioning of comments made by Piggott from the Bench (notes 50 and 51 below) and his implied complaint regarding Piggott's summing up in a criminal case: Lugard to Harcourt, confidential, May 4, 1911: CO129 377; Lugard to Harcourt, No 238, June 19, 1911: CO129 378.

⁶¹ (No 16 of 1898) s 11.

Commerce for its views. The chairman of the Chamber and its representative on LegCo, Mr E A Hewett, was influential in opposing Piggott's initiative. There was no love lost between Hewett and Piggott: in 1911 Hewett refused to sit on the Law Committee in LegCo if the Chief Justice were present,⁶² and in 1912 he unsuccessfully but outspokenly protested against an increase in Piggott's pension entitlement.⁶³ Hewett's action with respect to the extension of the long vacation particularly incensed the Chief Justice, who accused him of unfair tactics.⁶⁴ When the *China Mail* editorialised against the proposed rule of court⁶⁵ Piggott wrote to the editor on February 27, 1908 to express his opinion on the matter.⁶⁶ This action probably contravened Colonial Regulations and Piggott was asked for an explanation. He bitterly criticised the Governor for taking Hewett's side:

'I have had a long experience in official life, and I submit without fear of contradiction that a more astonishing disregard of the courtesies of correspondence could hardly be imagined. My statements are ignored, my request is disregarded, and the opinions of hostile critics are accepted without the slightest communication being made to me on the subject.'⁶⁷

He maintained that the government's attitude was highly prejudicial to the dignity of the Bench,⁶⁸ but that dignity, observed the Secretary of State, was rather jeopardised by the Chief Justice engaging in newspaper controversy.⁶⁹

A further proposal for amendment of the law *was* approved, although it came not from Piggott but from Hewett and the Chamber of Commerce. It was alleged that the Chief

⁶² Lugard to Harcourt, confidential, May 6, 1911: CO129/377.

⁶³ Severn to Harcourt, No 154, Apr 23, 1912: CO129/389; *Hong Kong Hansard* 1912 20-1.

⁶⁴ *China Mail*, Feb 25, 1908; Piggott to Lugard, undated, enclosure 2(IX) in Lugard to Crewe, No 243, Sept 22, 1908: CO129/348.

⁶⁵ Feb 19, 1908.

⁶⁶ See Lugard to Crewe, No 155, June 11, 1908: CO129/347.

⁶⁷ Piggott to Lugard, Oct 5, 1908, enclosure 1 in Lugard to Crewe, No 263, Oct 15, 1908: CO129/348.

⁶⁸ Enclosure 1 in Lugard to Crewe, No 65, Mar 11, 1909: CO129/355.

⁶⁹ Although the Bar and the Law Society were in favour of an extension of the vacations (see *China Mail*, Mar 4, 1908), it seems that Piggott's rule of court was not approved. Later in 1909, when Piggott wanted to write for publication an article of reminiscences about Prince Ito (see appendix, item 19), he took the precaution of asking whether there was any objection. Well aware by then of Piggott's character, the Foreign Office was unwilling to grant permission without seeing a proof: Piggott to Under-Secretary, Dec 7, 1909: CO129/364.

Justice disbelieved in trial by jury in civil matters and, when he refused an application for a jury to determine matters of fact, he became in effect the sole judge for the disposal of important commercial litigation because his decisions were invariably upheld by the two-man Full Court and the Privy Council would not interfere where questions of fact were concerned. Piggott had 'practically become a despot.' Yet the mercantile community had no faith in his impartiality. This serious charge, made privately to the Governor, could not be properly investigated: even were a Royal Commission appointed, the whole legal profession would support Piggott 'of whom they lived in terror, fearing professional ruin . . .'⁷⁰ It was proposed to amend the Code of Civil Procedure so as to give litigants a right to trial by jury, but despite approval from the Secretary of State, no alteration of the law seems to have been made.

The revision of the laws

For some reason which does not appear from the records, Sir Francis Piggott was chronically short of money while in Hong Kong. Indeed, the Governor reported in 1911 that his financial embarrassments had become little short of a scandal.⁷¹ In order to ameliorate the Chief Justice's indebtedness Lugard had offered Piggott the task of preparing the regular revision of the ordinances for a new edition. He had done the same kind of work in Mauritius. ('How anyone,' it was later minuted in the Colonial Office, 'who had ever seen the Mauritius Revised Laws could imagine that Sir F Piggott was fitted to revise the Hong Kong Laws I do not understand.'⁷²) The remuneration demanded and reluctantly accepted was far higher than the Executive Council originally intended to provide, yet Piggott continually, though unsuccessfully, pressed for a very large increase. And when the first two volumes were submitted on May 23, 1912 they were found to contain numerous mistakes. Claude Severn, the Acting Governor, insisted on a careful and independent scrutiny of the work done with the cost of reprinting flawed pages to be borne by the compiler. Piggott claimed copyright in the work and threatened to defend his interests in

⁷⁰ Lugard to Crewe, confidential, Aug 13, 1909; CO129 357. See also No 234 of the same date, bound in the same volume.

⁷¹ Lugard to Harcourt, confidential, Dec 29, 1911; CO129 390.

⁷² Minute on May to Harcourt, confidential, July 30, 1912; CO129 391.

the courts. This was a successful tactic and led to a settlement, but the colonial government was enraged: 'it cannot be sufficiently deplored that work of this nature was entrusted to a reviser who, however able and industrious, has proved to be entirely untrustworthy.'⁷³ One volume of Piggott's did in fact appear in print,⁷⁴ but the complete revision of the ordinances up to the end of 1912 was alleged to have been prepared by C G Alabaster.⁷⁵

The episode of the revised edition led to a further financial humiliation for Piggott when A B Suffiad, his clerk, sought assistance from the government in recovering a sum of \$600 for clerical work associated with the project.⁷⁶ Issue of a writ had only been avoided by the Acting Attorney General paying \$100 out of his own pocket.⁷⁷ Piggott explained that his promise of payment to Suffiad was a pure act of generosity without consideration, though he would fulfil the promise as soon as convenient.⁷⁸ The Colonial Office was unsympathetic and threatened to deduct the outstanding amount from Piggott's pension, but the by then former Chief Justice of Hong Kong was not to be intimidated: deduction from pension was illegal, he asserted, and the attitude of the Colonial Office was vindictive.⁷⁹ Downing Street lost confidence in its initial legal diagnosis and, with Piggott's assurance that the money would eventually be paid, the matter disappeared from the files.

A new court of appeal for Hong Kong

Objection having been taken to Piggott's own suggestion that a third judge be appointed to the Supreme Court in Hong Kong, litigants unhappy with the decision of the Chief Justice at first instance had no effective avenue of appeal except to the Privy Council on matters of law. As president of the Full Court, the Chief Justice could ensure that the judgment under appeal was affirmed,⁸⁰ despite widespread dissatisfaction with the quality of justice in Piggott's court ('it was a matter of common knowledge,' one allegation went, 'that if a client wished to win

⁷³ Severn to Harcourt, confidential, June 27, 1912: CO129/390.

⁷⁴ At least, it is listed in Leslie F Maxwell (comp), *A Legal Bibliography of the British Commonwealth of Nations* (2nd ed 1964) vol vii.

⁷⁵ See *Hong Kong Hansard* 1913 65.

⁷⁶ May to Harcourt, confidential, June 17, 1914: CO129/411.

⁷⁷ May to Harcourt, secret, June 15, 1914: *ibid*

⁷⁸ Piggott to Under-Secretary, July 29, 1914: CO129/419.

⁷⁹ Piggott to Under-Secretary, Aug 25 and Oct 15, 1914: *ibid*.

⁸⁰ See, eg, *Hong Kong Hansard* 1912 38.

his case it was advisable for him to engage a particular Solicitor, and a particular Counsel both of whom were favoured by the Chief Justice⁸¹). The proposed solution was to constitute a three-man court of appeal in Hong Kong by bringing in the judge of His Majesty's court at Shanghai.⁸² A Bill was drafted to implement this scheme, but Piggott was strongly opposed and the whole thing was abandoned: nothing further was to be done until Piggott's retirement.⁸³ The Secretary of State for Foreign Affairs reluctantly concluded that the correspondence displayed 'a complete absence of that spirit of cordiality and good will on the part of the Chief Justice without which the scheme could never have succeeded.'⁸⁴ The main obstacles in Piggott's mind were precedence (he wanted it recognised that the Chief Justice should preside in his own court because of the necessity of maintaining his prestige)⁸⁵ and reciprocity (which was impossible).⁸⁶

The government blamed Piggott's personal hostility for the initial failure of the proposal, though the Chief Justice himself thought the scheme unpractical because of the increase in appellate work.⁸⁷ The Acting Governor, F H May, urged in October 1910 that a proper court of appeal was an urgent necessity.⁸⁸ Eventually, following the decision that Piggott be retired soon after turning 60, the Governor was instructed to adopt the scheme. But, to the surprise of the Colonial Office, Lugard then sent a despatch indicating that prominent legal

⁸¹ Lugard to Crewe, confidential, Aug 13, 1909: CO129/357. See also minutes on Lugard to Crewe, confidential, June 23, 1909: CO129/356 and Stubbs' minute, claiming that Piggott's judgments in Hong Kong had little respect, on Lugard to Harcourt, confidential, Mar 8, 1911: CO129/376.

⁸² Lugard to Elgin, confidential, Apr 7, 1908: CO129/347.

⁸³ See enclosure 3 in Lugard to Crewe, No 263, Oct 15, 1908: CO129/348; Lugard to Crewe, confidential, Jan 26, 1909: CO129/355; Lugard to Crewe, confidential, June 23, 1909: CO129/356; Langley to Colonial Office, No 8223/08, Mar 11, 1909: CO129.360; Langley to Colonial Office, No 31023/09, Aug 24, 1909: CO129.362.

⁸⁴ Langley to Colonial Office, No 8223/09, Mar 11, 1909: CO129.360. Piggott considered this a covert imputation on his probable conduct as a judge and threatened to seek the protection of the Lord Chancellor: enclosure 2 in Lugard to Harcourt, confidential, Dec 29, 1911: CO129.381.

⁸⁵ Piggott to Lugard, Feb 24, 1908, enclosure 7 in Lugard to Elgin, confidential, Apr 7, 1908: CO129.347; enclosure 1 in Lugard to Crewe, confidential, July 23, 1909: CO129.357; cf Piggott to Lugard, Jan 30, 1909: CO129/355.

⁸⁶ Lugard to Piggott, Oct 6, 1908, enclosure 3 in Lugard to Crewe, No 263, Oct 15, 1908: CO129/348.

⁸⁷ Piggott to Crewe, Apr 17, 1910: CO129.374.

⁸⁸ May to Crewe, confidential, Oct 22, 1910: CO129.369.

personnel in Hong Kong in effect agreed with Piggott."⁹⁰ The plan went through anyway, incorporated in the Full Court Ordinance 1912."⁹¹

This issue did more than anything else to foreshorten Piggott's career in Hong Kong. Reginald Stubbs minuted that the Chief Justice had been intolerably offensive about the proposal and that the Foreign Office would not expose their judge to his insults.⁹¹ Sir F Hopwood accused Piggott of being a 'champion obstructor of speedy and indifferent justice,'⁹² and it was in this context that the Colonial Office determined to be rid of him.

Retirement

From 1908 onwards the clerks in the Colonial Office, who routinely read governors' despatches and commented on them, expressed increasing hostility towards Sir Francis Piggott. 'The man is becoming intolerable and wants suppressing'; 'He certainly ought to be suppressed: but nothing short of a sledgehammer would do it.'⁹³ 'These letters could not be written by a man who was quite in his right mind'; 'The disease from [which] Sir FP is obviously suffering does not fall within the domain of medicine.'⁹⁴ (The Secretary of State himself minuted in 1908: 'I suppose the CJ is technically sane.'⁹⁵) 'Sir F Piggott's conduct in this and other matters has been so extraordinary that I have had grave doubts as to whether such mental balance as he at one time *may* have possessed (never I think, very well poised) has not become deranged by hot climate, knight bachelorhood, chief justiceship or possibly a little of all three.'⁹⁶

In March 1909 Stubbs proposed attempting to annoy Piggott into resigning,⁹⁷ and a few months later another of the clerks wrote: 'The moral of it all is that there ought to be some way of getting rid of incompetent or cantankerous CJs

⁹⁰ Lugard to Harcourt, confidential, Dec 29, 1911: CO129/381.

⁹¹ No 27.

⁹² On Langley to Colonial Office, No 8223/08, Mar 11, 1909: CO129/360 and Lugard to Harcourt, confidential, Mar 8, 1911: CO129/376.

⁹³ On Lugard to Crewe, confidential, June 23, 1909: CO129/356.

⁹⁴ On Lugard to Crewe, No 111, Apr 25, 1908: CO129/347.

⁹⁵ On Lugard to Crewe, No 243, Sept 22, 1908: CO129/348.

⁹⁶ On Lugard to Crewe, confidential, Oct 15, 1908: *ibid*.

⁹⁷ On Langley to Colonial Office, No 8223/09, Mar 11, 1909: CO129/360.

⁹⁸ *Ibid*; see also his minute on Lugard to Harcourt, confidential, Mar 8, 1911: CO129/376.

in Hong Kong and elsewhere.⁹⁵ Hong Kong law seemed to provide a way under Pension Minute No 21, which purported to permit the Governor in Council to require any judge or other public officer to retire from the public service at any time after attaining the age of 60 years. Stubbs urged that notice be given immediately. 'It is quite clear, I think, that Sir F Piggott is actively mischievous (or mischievously active) and ought to be got rid of.'⁹⁶ But A E Collins doubted the vires of the Pensions Minute: subsidiary legislation requiring retirement could not be authorised by the Pensions Ordinance.¹ He suggested that the minute be re-enacted as primary legislation,² and an amendment³ to the Pensions Ordinance, known locally as 'the Piggott Relief Ordinance,'⁴ was accordingly passed in 1910.⁵ 'Every day that he stays,' minuted Stubbs, 'seems to me to increase the risk of some more than usually eccentric action or judgment which will lead to a public petition for his removal from office.'⁶

On October 30, 1911 Piggott was informed of the Governor in Council's decision that, as it had been decided to establish an appeal court in Hong Kong which could not operate until after his retirement, he must leave the service on or before April 30 next. (Piggott's 60th birthday was on April 25, 1912.) He contended that this decision was not made independently and reasonably, and he declined to be 'discharged like a Chinese coolie.' On reconsideration, the Governor in Council informed him he must retire, in accordance with the amended Pensions Ordinance, quite independently of the establishment of the new court.⁷

⁹⁵ On Lugard to Crewe, confidential, June 23, 1909: CO129/356.

⁹⁶ On Lugard to Crewe, No 97, Apr 16, 1909: *ibid*.

¹ No 10 of 1862.

² Lugard to Crewe, confidential, July 23, 1909: CO129/357; and see *Hong Kong Hansard 1910* 10.

³ No 1 of 1910.

⁴ Minute by Risley on Lugard to Harcourt, confidential, Mar 8, 1911: CO129/376.

⁵ The new s 3 of the Pensions Ordinance read: 'The Governor-in-Council may (subject as regards officers appointed under instructions from or through the Secretary of State for the Colonies, to the approval of such Secretary of State) require any Judge or other Public Officer to retire from the Public Service of the Colony at any time after he attains the age of sixty years.' The Letters Patent at that time (promulgated on Jan 19, 1888) did not contain the special provisions for the retirement of judges which are now in force, but simply decreed that judges were to hold their offices during pleasure.

⁶ On Lugard to Harcourt, confidential, Mar 8, 1911: CO129/376.

⁷ Lugard to Harcourt, confidential, Dec 29, 1911: CO129/381.

The arguments of the Chief Justice in response to this apparently unexpected news are worth some attention. The Executive Council, he said, are the governor's sworn constitutional advisers and are bound to give advice under the Pensions Ordinance to the best of their ability; he implied that the order of the Secretary of State could not be a sufficient reason for the Governor in Council's decision, for it destroyed the independent exercise of the council's advisory functions. No just cause for 'dismissal' had been alleged. No proper reasons had been given. And no man could be deprived of his rights without a hearing. Piggott conceded, 'although the point is not free from doubt,' that in exercise of prerogative powers the Secretary of State could dismiss a colonial judge without giving reasons. 'With regard to other civil servants this is established law.' But the Secretary of State had not professed to act under the prerogative. '[It] is unquestionable that the arbitrary exercise of power is unknown to the law of England save in the sole instance of the exercise of the King's prerogative, the sanction in respect of an abuse of this power being in Parliament. No man can be deprived of his rights without just reason given,' subject only to prerogative powers not exercised in this case.*

How correct were Piggott's arguments? With respect to dismissal and related executive action the courts have been reluctant to permit public law remedies,⁸ and thus relief by way of certiorari or declaration might not have been easy to secure, even assuming that the Supreme Court in Hong Kong would have heard an application by a fellow judge claiming to be invalidly required to retire and thus in law still the president of that court. But there seems little doubt that, in exercising statutory powers of such consequence, the Governor in Council was under a duty to comply with the rules of natural justice. Piggott should have been given an opportunity to be heard before the decision was made and he should have been informed of the case against him. The Privy Council had indeed applied the first of these principles to Piggott himself in 1909. The Chief Justice had made a committal order against the appellants under section 23 of the Supreme Court Ordinance 1873,⁹ which empowered a judge in certain situations to deal with an

* Piggott to Lugard, Dec 1, 1911, enclosure 1 in *ibid.*

⁸ See the case commentary at (1979) 9 HKLJ 337.

⁹ No 12 of 1873.

individual 'as for a contempt of the Court.' Piggott later confirmed his order and the Full Court, consisting of Piggott CJ (with the deciding vote) and Wise J, dismissed an appeal — but the Judicial Committee rescinded the committal order because 'the Chief Justice should, before sentencing [the appellants], have given them an opportunity of giving reasons against summary measures being taken.'¹¹

In addition, it is probable that the decision to retire the Chief Justice was ultra vires for the further reason put forward by Piggott, that the Governor in Council had not exercised his judgment independently and had improperly taken into account the order of the Secretary of State. A recent Hong Kong case illustrates the reasoning: when the Director of Agriculture and Fisheries obeyed an order of the Governor in Council that game hunting be prohibited, his blanket refusal to issue hunting licences under the Wild Animals Protection Ordinance¹² was declared to be contrary to law. The directive of the Governor in Council

'put the Director of Agriculture and Fisheries in a most invidious position. In his capacity as such Director he must perform his duty in accordance with the directive. In his capacity as licensing authority he must exercise his discretion independently and judicially to the best of his ability in accordance with the provisions of the Ordinance . . . [We] regret to say that he has not exercised this discretion because he felt his discretion was fettered by the directive of the Executive Council . . .'¹³

Similarly, the Executive Council when requiring Piggott CJ to retire was apparently merely complying with the directive of the Secretary of State for the Colonies and was not independently and properly exercising its discretion under the Pensions Ordinance.

It may be that Piggott's arguments persuaded the Colonial Office that the Governor in Council's action was ineffective. In any event, it was decided to guarantee the

¹¹ *Chang Hong-kin v Piggott* [1939] AC 312, 315-16. Compare *Re Pollard* (1868) LR 2 PC 106, an appeal from a contempt ruling by Smale CJ (for background information on this case see J W Norton Kyshe, *The History of the Laws and Courts of Hong Kong* (London: T Fisher Unwin, 1898) vol i, 122-30).

¹² Cap 170, LHK 1978 ed.

¹³ *Re the Hong Kong Hunters' Association Ltd* [1980] HKLR 179; see (1981) 11 HKLJ 80. See also *Chee Quan-ling, ex p Hon Tung School* [1963] HKLR 866, 877-8.

removal of the Chief Justice by resorting to prerogative powers. On March 15, 1912 the Secretary of State issued a notification declaring His Majesty's pleasure that Sir Francis Taylor Piggott should cease to hold office from and after April 30, 1912.¹⁴

Piggott goes to China

Even before prerogative powers were relied upon to retire him, Piggott was casting about for further employment. He wrote to Sir John Jordan, British Minister at Peking, to ask that his name be remembered if the new republican Chinese government considered appointing a legal and constitutional adviser,¹⁵ and in May the press reported that he had in fact accepted such a post.¹⁶ But this was not so. Piggott discussed the matter with Sir Kai Ho Kai, one of the Chinese Legislative Councillors in Hong Kong, who put him in touch with Dr Wu T'ing-fang.¹⁷ As Piggott was leaving Hong Kong for Peking to begin lobbying for the position, however, the Foreign Office, on its own initiative, instructed Jordan to express doubt to the Chinese government.¹⁸ The Colonial Office approved the draft of a telegram sent to Jordan which referred to Piggott's 'peculiar temperament' and the 'constant friction' likely to surround him if appointed.¹⁹ Piggott was

¹⁴ Minutes on Lugard to Harcourt, No 345, Oct 4, 1911: CO129/380. As the notification pointed out, the Supreme Court Ordinance 1873 declared that judges held office at pleasure.

¹⁵ Piggott to Jordan, private, Feb 22, 1912, enclosure in Jordan to Langley, private, May 31, 1912: FO371/1346 (26074).

¹⁶ See South China Morning Post, May 7, 1912, citing the North China Daily News: FO371/1346 (23102). See also previous rumours, as in South China Morning Post, Apr 25, 1912: 'Nothing,' the Japan Mail had said, 'could conduce more to the stability of the Chinese Republic in Western eyes than its association with a juris-consult of such altogether exceptional ability and reputation as Sir Francis Piggott. He would be a second Sir Robert Hart in some respects and a greater Sir Robert Hart in others.'

¹⁷ As Ng Choy, Wu (who was Ho Kai's brother-in-law) was admitted to practise at the Hong Kong Bar on May 18, 1877, the first Chinese to join the profession. He was made a member of the Legislative Council in 1880 but later went to China as legal adviser to Li Hung-chang and as diplomat (he was Ambassador to Washington 1897-1902 and 1907-9). He joined the republican cause and was Minister of Justice in Sun Yat-sen's provisional government in Nanking. See Norton Kyshe, *op cit.* vol i, 261, 297, 491; Lo Hui-min (ed), *The Correspondence of G E Morrison* vol ii: 1912-1920 (Cambridge: Cambridge UP, 1978) 57n; Luk, 'A Hong Kong Barrister in Late-Ch'ing Law Reform' (1981) 11 HKLJ 339.

¹⁸ Grey to Jordan, tel. No 89, June 3, 1912: FO371/1346 (23187).

¹⁹ Grey to Jordan, tel. No 121, July 30, 1912: *ibid* (30223); Langley to Colonial Office, confidential, No 30223/12, July 12, 1912: CO129/395. Stubbs claimed

informed of the British government's intervention and protested vigorously,²⁰ and in October his appointment as legal adviser was again erroneously announced in the press.²¹

It is probable that the Foreign Office opposition was decisive in denying Piggott the position he sought.²² Mabel Piggott's brother-in-law, Sir Robert Price MP, wrote privately to the Secretary of State for Foreign Affairs on his behalf²³ but to no avail, and Piggott was reported to be near bankruptcy;²⁴ he threatened to demand compensation.²⁵ He stayed in Peking for most of 1913, obtaining a couple of temporary semi-official jobs with the Chinese government²⁶ and publishing his rather patronising *Letters on the Chinese Constitution*, but he never received the substantive appointment he desired. He kept protesting until 1915.²⁷ In the meantime the former Chief Justice returned to Hong Kong as a junior barrister.

Return to the Hong Kong Bar

Desperately short of money, Piggott had decided to re-enter private practice. The Acting Governor, advised by the Attorney General that there was no legal objection to Piggott's admission to the local Bar, was alarmed. The Colonial Office agreed that the situation was undesirable, though it could not

that the general opinion among those who knew Piggott well was that he was no longer wholly sane. And see Piggott's bitter and abusive private letter to Alston. Nov 19, 1912: FO371/1346 (51584).

²⁰ Jordan to Grey, confidential, No 336, Aug 8, 1912: *ibid* (35631).

²¹ *Morning Post*, Oct 7, 1912: *ibid* (43842).

²² Liang Shih-yi to Piggott, Dec 30, 1912, enclosure 2 in Jordan to Grey, No 4, Jan 6, 1913: FO371/1614 (2950). It was not only the Foreign Office, with the approval of the Colonial Office, that lobbied against the appointment: Sir Henry May wrote to G E Morrison, who was an adviser to the Chinese government, that he hoped Piggott would not be employed in China. 'He's not a sound lawyer and I question whether he is sound in any sense': Lo Hui-min, *op cit.* 18-19.

²³ Price to Grey, private, Jan 8, 1913: FO371/1614 (1164).

²⁴ Price to Grey, private, Feb 14, 1913: *ibid* (8586).

²⁵ Piggott to Jordan, Jan 1, 1913, enclosure 4 in Jordan to Grey, No 4, Jan 6, 1913: *ibid* (2950).

²⁶ Alston to Langley, Nov 1, 1913: *ibid* (52415).

²⁷ Piggott to Alston, Mar 23 and 28, 1915: FO371 2329 (34409); Apr 14, 1915: *ibid* (44592); Piggott to Grey, May 1, 1915: *ibid* (54866) (refusing to end the correspondence: 'It hardly lies in the mouth of a person who has wronged another to say that he is not to point out to him that he has acted unjustly'). According to Lo Hui-min, *op cit.* 2, Piggott threatened legal action to compel the Chinese government to employ him. At one point he accused Morrison of complicity in the affair (Piggott to Alston, Mar 28, 1915: FO371 2329 (34409)), though almost certainly unfairly (see Lo Hui-min, *op cit.* 71). He also blamed Yuan Shih-kai's chief private secretary of blocking his appointment for personal reasons: FO371 1950 (59855).

be avoided.²⁹ Piggott was duly admitted and appeared before the Full Court³⁰ where he criticised a magistrate for failing to give effect to Piggott CJ's ruling in an earlier case!³⁰ After Piggott's ignominious final departure from Hong Kong in 1914, Lugard's successor, Sir Henry May, wrote to the Colonial Office:

'There is much indignation in the Colony at the injury done by Sir F Piggott to the reputation of the judiciary which, until his appointment to it, was absolutely unsullied, and there is a strong feeling that a Regulation should be made precluding a pensioned officer who has held a substantive appointment of a judge in a Crown Colony from practising as a barrister or a solicitor in the Colony in which he has held such appointment, and I venture to suggest the making of such a Regulation.'³¹

The Colonial Office declined to propose legislation on what was, they hoped, a unique case.

Since Piggott's time, several Hong Kong magistrates and District Judges have retired from the judiciary and gone into unlimited private practice at the local Bar. No puisne judge seems to have done so. In 1952 it was laid down that new appointees to colonial judgeships must promise not to practise thereafter in the territory to which they are appointed, but the Secretary of State has usually permitted advisory and consultative work not extending to advocacy in the courts.³² A former puisne judge in Hong Kong was admitted to a limited practice in 1963 despite opposition by the Bar Association.³³ The Piggott precedent, not referred to in that case, supports those who would doubt the wisdom of allowing superior court judges to appear as barristers in the courts from which they have retired.

Illness and return to England

While in Peking, near the end of October 1912, Piggott

²⁹ Seven to Harcourt, tel. No 17, 1913: CO129/404.

³⁰ *Re Chung Sau-nam* (1914) 9 HKLR 26; see also *Chung Sau-nam v Lung Chai-kwong* (1913-14) 10 HKLR 1.

³¹ *Re Wong Ka-cheong* (1905) 1 HKLR 1.

³² May to Harcourt, secret. June 15, 1914: CO129/411.

³³ Percy Chen recalls that, in the early 1920s, the Chief Justice of Trinidad retired and entered private practice in that colony, though with an undertaking not to appear in court: *China Called Me: My Life Inside the Chinese Revolution* (Boston, Toronto: Little, Brown, 1979) 31.

³⁴ *Re Courtenay Walton Reece* [1963] HKLR 326

was taken seriously ill and underwent an operation.³¹ A year later he was reported to be in 'very low water,' considering himself quite broken by HMG's persecution of him³² and by what he termed 'a particularly low and infamous intrigue.'³³ He could not have been in good health, therefore, when he returned to Hong Kong, and in April or May 1914 he had a bout of severe asthma which drove a clot of blood to his brain. He became temporarily demented and narrowly escaped paralysis. Medical advice was that he should go back to England, but so deeply was he in debt that he could not pay the hotel, doctor, nurse or passage. Sir Henry May sent him home out of the vote for the relief of destitutes.³⁷ A more humiliating exit from the colony where he had for seven years held the top judicial post could scarcely be imagined.

Financially embarrassed, in poor health, embittered and frustrated, Sir Francis Piggott settled down in England for the remaining years of his life. The goal of his ambition, he had declared in 1911, had always been promotion to the Judicial Committee of the Privy Council; for fifteen years he had worked towards it, and had published at his own expense his various works on private international law.³⁸ Now he decided to devote his time to the study of public international law, with special reference to the law of the sea. He began a series of original historical and legal works, of which only two were published although at least four others were contemplated,³⁹ and a collection of reprints. The patriotic objective of his labours has been described as follows:

'One of the anomalies of English history is the fate that befell the chief weapon used by Great Britain to strike down Napoleon: for not only was it discarded during the nineteenth century in deference to foreign opinion, its

³¹ Jordan to Grey, No 466, Nov 25, 1912; FO371/1346 (52464).

³² Alston to Langley, Nov 1, 1913; FO371/1614 (52415).

³³ Piggott to Alston, Nov 3, 1913, enclosure in Alston to Langley, Nov 4, 1913; *ibid* (52416).

³⁷ May to Harcourt, secret, June 15, 1914; CO129/411.

³⁸ Piggott to Lugard, confidential, Dec 27, 1911, enclosure 2 in Lugard to Harcourt, confidential, Dec 29, 1911; CO129/381.

³⁹ Vol i was *A Documentary History of the Armed Neutralities, 1780 and 1800* (with G W T Omond); vol iv was *The Declaration of Paris, 1856*. See items 38 and 39 of the appendix below. Vols ii and iii were given the title of *Documentary History of the French Wars, 1793-1815*, in two parts, and vols v and vi were projected as *Principles Governing the Relations of Belligerent and Neutral*, also in two parts. See *The British Museum Catalogue of Additions to the Manuscripts 1931-1935* (London: Trustees of the British Museum, 1967) 37-8.

use being condemned as contrary to International Law, but even its natural advocates abandoned its defence. The British use of Sea Power, together with English conceptions of the International Law relating to blockade, contraband, etc, remained under condemnation until an American admiral (Mahan) inferred, and the Great War demonstrated, that the former British position might indeed bear justification. A distinguished jurist, Sir Francis Taylor Piggott . . . , approaching the study from the historical and legal standpoint, undertook the task of vindicating the British attitude.⁴⁰

The Times⁴¹ considered his views 'not wholly acceptable to many jurists.'

'He took what may be called a thoroughly pro-British point of view⁴² in regions where points of view are perhaps less helpful than general principles and the logical application of those principles to particular problems. On the other hand his energy, enthusiasm, and cultured mind did much to stimulate the study of international law in days when it needs to be studied more severely than ever, and it may well be that, in the perspective that finally tests the authority of jurists, his labours will secure a permanent place.'

Sir Francis Piggott died in 1925, on the same day as Dr Sun Yat-sen.

Conclusion

Piggott was certainly a quarrelsome fellow, imperceptive or careless of the effect his eristic attitudes had on his colleagues and unconcerned about the problems he created for them by his unwillingness to compromise. He never doubted his own capabilities or wearied of the struggle for advancement. With an enormous capacity for hard work and with some talent, he rose to one of the top positions in the colonial legal service — yet his want of tact was as great as his ambition, and these two aspects of his personality combined to bring him down. He had his friends and admirers but they were far outnumbered by his enemies and detractors.⁴³

⁴⁰ 'The Piggott Papers' (1931-32) 6 British Museum Quarterly 75-6.

⁴¹ Mar 13, 1925.

⁴² 'He would have asked for no higher praise': *Broken Thread*, op cit, 199.

⁴³ Among his friends were counted Sir Kai Ho Kai, T B Clarke-Thornhill (a Foreign Office functionary who had been with the British embassy in Peking),

Long before he left Mauritius he had utterly exasperated the Colonial Office clerks whose opinions were so important to a career in the colonial service, and it was only the unexplained decision of the Secretary of State that sent him to Hong Kong. He began his chief justiceship on good terms with Sir Matthew Nathan, but relations between them soon deteriorated. Soon after her arrival in Hong Kong in 1907 Lady Flora Lugard could report that the Chief Justice was 'a most cantankerous and universally detested person.'⁴⁴ Her husband wrote:

'He has a furor scribendi, and a natural hostility to Administrative and Executive officers.'⁴⁵ He lacks natural dignity and tact but is immensely affable. . . . He at once began firing off long letters at me, and raising all kinds of complicated questions of years' standing before I had been here a week.'⁴⁶

After the affair of The Eyrie Lugard stated that 'we are by way of being great allies and friends'⁴⁷ — but they were not allies and friends for long. Piggott became so notoriously difficult to work with that, not only was he compelled to retire, but his own country's representatives intervened to frustrate his plans for employment in China.⁴⁸ By the time he arrived in Hong Kong his reputation for pugnacity was already well established, and every dispute with Nathan, Lugard and May

C D Wilkinson of the Hong Kong solicitors' firm Wilkinson and Grist, and possibly Joseph Kemp, Acting Attorney General in 1914 who had paid \$100 to Suffiad out of his own pocket in order to avoid issue of a writ against the former Chief Justice (see p 276 above). Piggott dedicated his book on extradition 'to my friend A V Dicey.' The extreme hostility of E A Hewett has been noted above. Piggott apparently formed an extraordinary dislike of E H Sharp KC who, though leader of the Hong Kong Bar when Piggott arrived, left the colony in 1906 and did not return until after Piggott's retirement. In the interval, ironically, it was said that he won two or three cases in the Privy Council taken on appeal from Piggott's judgments.

⁴⁴ Flora Lugard to Edward J Lugard, Sept 21, 1907: *Lugard Papers* (Rhodes House, Oxford: MSS Brit Empire s 67) 7.

⁴⁵ Compare Piggott's claim that 'it is not in my nature to stir up strife, nor is there anything in any work of mine from which, even if the Foreign Office may not agree with it, such an intention could be construed. That I am independent is another and different matter which arises from my training, and my position as CJ. But the record of my eleven years' service in Mauritius shows that my instincts are conciliatory . . .': Piggott to Grey, Aug 8, 1912, enclosure 8 in Jordan to Grey, confidential, No 336, Aug 8, 1912: FO371/1346.

⁴⁶ Frederick Lugard to Edward J Lugard, Sept 23, 1907: *Lugard Papers* 12.

⁴⁷ *Ibid.*

⁴⁸ The Foreign Office refused his offers of assistance in 1914: see FO371/1950 (59855). Nevertheless the British government asked him to prepare the official handbook, *The Freedom of the Sea*, used at the Versailles peace conference at the end of the first world war: *Broken Thread*, op cit, 199.

simply confirmed it. His views were rarely sympathetically considered.

This was especially so in the period when Lugard was governor. Sir Frederick had had no experience of administrative routine and settled constitutional practice when he became governor of Hong Kong in 1907; his previous career had been in Africa, where improvisation, autocracy and freedom of action had most characterised his methods of administration.⁴⁹ He seemed to have little understanding of the proper relationship between executive and judiciary in a regular Crown colony with an established community. He seemed not to appreciate the constitutional limitations upon his power, and was prepared to call the Chief Justice to account for remarks made from the Bench. Sir Francis Piggott, however, was anxious to assert and insist upon the constitutional role of an independent judiciary, refusing to admit that the governor could interfere with the judges' discretion in the exercise of their judicial duties.⁵⁰ His views were solidly founded on principle:

'I have the honour to remind Your Excellency that I administer the King's justice in the Colony, and for such purpose I represent His Majesty. If in the course of the administration of the civil affairs of the Colony an order is made which interferes with the administration of justice which I cannot get altered by the usual method, it is my duty to make the strongest representation possible to that end; and this even though the order has received the sanction of the Secretary of State.'⁵¹

Lugard, for his part, complained of 'the ceaseless attitude of querulous controversy assumed by Sir F Piggott, towards the Executive Government,'⁵² and it would be idle to deny the provocative nature of the way Piggott operated. It is not conducive of the public interest that attitudes of rancour, hostility and intolerance should exist between the executive and judicial branches of government, especially in a small colony such as Hong Kong in the early years of this century. Some

⁴⁹ See Margery Perham, *Lugard: The Years of Authority, 1898-1945* (London: Collins, 1960) 286-7.

⁵⁰ See enclosures 1 and 3 in Lugard to Elgin, confidential, Apr 7, 1908: CO129/347.

⁵¹ Piggott to Lugard, Feb 13, 1909, enclosure 6 in Lugard to Crewe, No 66. Mar 12, 1909: CO129/355. Only once was Piggott supported by the Colonial Office on a matter of constitutional principle: see Lugard to Crewe, No 203, July 15, 1909: CO129/357.

⁵² Lugard to Crewe, No 263, 15 Oct 1908: CO129/348.

of the blame for this lamentable state of affairs must be laid at Piggott's door. In England the office of Lord Chancellor is the essential link between administrators and judges; in Hong Kong the Chief Justice is the best candidate to fulfil that role. Piggott's defects of personality prevented him from doing so and guaranteed the failure of his many attempts at reform. But he was not solely responsible: the Colonial Office never really gave him a chance in Hong Kong. The clerks, who had not supported his appointment as Chief Justice, almost invariably opposed him in his disputes with other officials; R E Stubbs, in particular, seemed implacably prejudiced against him ('The root fact is that the man is a cad and is unable to conceal his nature'³³). Piggott resorted to waging war by correspondence in defence of his actions, his proposals, and his honour. He was too frequently a Chief Justice in his own cause.

As a judicial administrator, Piggott CJ was a disaster. His record as a judge, however, as it appears in the Hong Kong Law Reports, is very much stronger, and his legal arguments with the Colonial Office were clearly stated and generally sound, perhaps even anticipating modern trends in administrative law. Yet the allegations of his partiality on the Bench, while never substantiated, are very disturbing. He never had any great success as a writer on legal matters,³⁴ and his primary purpose in his studies of the law of the sea — to defend his country's interests — cannot now be considered laudable. His novels are merely mildly entertaining. He was a learned man but more memorable for his controversies than for his achievements.

There are many similarities in temperament between Sir

³³ Minute on Lugard to Crewe. No 203. July 15, 1909: CO129/357.

³⁴ Dicey, when reviewing the second edition of Piggott's *Law and Practice Regarding Foreign Judgments*, said that 'Mr Piggott is one of those writers who confuse size with greatness and produce books which discredit the very name of a jurist': (1885) 1 LQR 247. *Principles of the Law of Torts* was moderately well reviewed ('We have been finding fault, but this because the book is worth taking seriously, one which with all its faults may profitably be read': (1886) 2 LQR 95) and the reviewer of *Imperial Statutes* was non-committal ((1903) 19 LQR 470). One of the Colonial Office clerks thought Piggott's books full of mistakes: minute on May to Harcourt, confidential, July 30, 1912: CO129/391. Piggott's *Extradition*, however, was termed 'an invaluable contribution to the legal works on international law.' Further, 'The learned author's name is a guarantee of erudition and scholarship, both of which are amply in evidence throughout the work': (1911) 27 LQR 229. See also (1918) 12 Am Jo IL 224. Incidentally, in relation to his legal writings, Piggott himself once doubted 'whether a Judge who has written a book ought to hear a case in which the questions he has discussed with great amplitude are involved': *Li Chok-hung v Li Pui-choi* (1910) 6 HKLR 12, 15.

Francis Piggott and Mr James William Norton Kyshe, Seth's predecessor as Registrar of the Supreme Court who was compulsorily retired a year before Piggott's arrival.⁵⁵ Both were middle-class men aspiring to positions probably beyond their capabilities; both were exceedingly industrious in the pursuit of their ambition. Both were inveterate scribblers whose works have not generally survived the test of time. Both were disputatious, tactless and insensitive. And both paid the penalty of early retirement from the colonial civil service. There were doubts about the sanity of both men, and in fact Norton Kyshe was almost certainly insane at the time of his death.⁵⁶ Piggott seemed occasionally to be losing his psychological equilibrium, but there is no evidence that he suffered any serious mental illness. He is certainly the more attractive of the two men: his accomplishments were greater, his disputes with officialdom were less personal and more principled, and his interests and talents were broader. There is, indeed, a good deal to admire in him: his directness compares favourably with the deviousness of other aspirants for high office. But it is admitted that it must be easier for readers of his life to like him now than for his colleagues in the colonial civil service to have liked him then.

APPENDIX

Books and Articles by Francis Taylor Piggott

- 1 *Foreign Judgments: Their Effect in the English Courts* (London: Stevens and Sons, 1879). The enlarged second edition was published as *The Law and Practice of the Courts of the United Kingdom relating to Foreign Judgments and Parties Out of the Jurisdiction, to which are added Chapters on the Laws of the British Colonies* (London: W Clowes and Sons, 1884). See also 'Additional Notes and Recent Cases on Service Out of the Jurisdiction' (London: W Clowes and Sons, 1886).
- 2 *Principles of the Law of Torts* (London: W Clowes and Sons, 1885).
- 3 'The Music of the Japanese' (1891) 19 *Transactions of the Asiatic Society of Japan* 271.
- 4 'New Japan' (1892) 52 *Fortnightly Review* (New Series) 335.
- 5 *Service Out of the Jurisdiction* (London: W Clowes and Sons, 1892).
- 6 *The Garden of Japan: A Year's Diary of Its Flowers* (London and Orpington: G Allen, 1892).

⁵⁵ See Wesley-Smith, 'James William Norton Kyshe' (1972) 2 HKLJ 278.

⁵⁶ In 1916 a receiver was appointed under the Lunacy Acts to administer Norton Kyshe's estate: see Crown Agents to Colonial Office, Feb 4, 1916: CO129/436.

- 7 *Exterritoriality: The Law Relating to Consular Jurisdiction and to Residence in Oriental Countries* (London: W Clowes and Sons, 1892). A second edition, revised and enlarged, was published by Clowes and by Kelly and Walsh in Hong Kong in 1907.
- 8 *The Music and Musical Instruments of Japan* (London: B T Batsford, 1893) (with notes by T L Southgate). Republished in 1909 and reprinted by Da Capo in 1971.
- 9 'Behring Sea Letters' (published by The Times in 1893).
- 10 *The Laws of Mauritius* revised by Piggott and others (Port Louis: G Bouic, 1896-97) 3 vols, revised by Piggott and I. A Thibault and published in 7 volumes in 1905.
- 11 *Two Chapters in the Law of Torts* (London: W Clowes and Sons, 1898).
- 12 *A Secretary of Legation: A Tale of Zafju* (London: Methuen and Co, 1901) (under the pseudonym 'Hope Dawlish'). A new edition was published by Kelly and Walsh in Hong Kong in 1909.
- 13 *Imperial Statutes Applicable to Colonies*: vol i: *Statutes of General Application* (London: W Clowes and Sons, 1902). vol ii: *Statutes of Special Application* (London: W Clowes and Sons, 1904).
- 14 *Nationality, Including Naturalisation and English Law on the High Seas and Beyond the Realm* (London: W Clowes and Sons, 1907) 2 vols.
- 15 *Foreign Judgments and Jurisdiction* (London: Butterworth and Co; Hong Kong: Kelly and Walsh, 1908-10) (Parts 1 and 2 form 3rd ed of *Foreign Judgments and Parties Out of the Jurisdiction* (item 1 above); Part 3 is 2nd ed of *Service Out of the Jurisdiction* (item 5 above)).
- 16 *A Village Community* (London: George Allen and Sons, 1910) (under the pseudonym 'Hope Dawlish').
- 17 *Extradition: A Treatise on the Law Relating to Fugitive Offenders* (London: Butterworth and Co; Hong Kong: Kelly and Walsh, 1910).
- 18 *Studies in the Decorative Art of Japan* (London: B T Batsford, 1910).
- 19 'The Ito Legend: Personal Recollections of Prince Ito' (1910) 67 *Nineteenth Century and After* 173.
- 20 'On the Making of an Over-Sea Dominion' (1910) 67 *Nineteenth Century and After* 605.
- 21 'A Fortnight in Seoul' (1910) 67 *Nineteenth Century and After* 1099.
- 22 'An Emperor's Waterway' (1911) 70 *Nineteenth Century and After* 871.
- 23 *Huafeng Luo Jen: Letters on the Chinese Constitution* (London: Butterworth and Co, 1913).
- 24 'The German Imperial-Colonial Blunder' (1914) 76 *Nineteenth Century and After* 941.
- 25 'China and the War' (1915) 77 *Nineteenth Century and After* 531.
- 26 'The Neutral Merchant: Three American Notes and the Answers' (1915) 77 *Nineteenth Century and After* 729.
- 27 'The Neutral Merchant and the "Freedom of the Sea"' (1915) 78 *Nineteenth Century and After* 247.
- 28 'Cotton as Contraband of War' (1915) 78 *Nineteenth Century and After* 500.
- 29 'The "Ligeance of the King"' (1915) 78 *Nineteenth Century and After* 729.
- 30 *The Neutral Merchant in relation to the Law of Contraband of War and Blockade under the Order in Council of 11th March, 1915* (London:

- University of London Press, 1915) (reprinted from *Nineteenth Century and After*).
- 31 *London's Voices: A Musical Playlet* (London, 1915; 2nd ed revised, 1916).
 - 32 *War in Disguise; or, The Frauds of the Neutral Flags* by James Stephen, edited by Piggott (London: University of London Press, 1917).
 - 33 'Sea-Power, the Armed Neutralities and President Wilson' (1917) 81 *Nineteenth Century and After* 819, (1917) 82 *Nineteenth Century and After* 149, 647.
 - 34 'The Relations of the Prize Court to Belligerent Policy' (1917) 3 *Transactions of the Grotius Society* 99.
 - 35 *The Free Seas in War: A Talk . . . on the Freedom of the Seas* (London: P S King and Sons, 1918).
 - 36 *Special Lectures on the Freedom of the Sea* (London: W Clowes and Sons, 1918).
 - 37 'A Note on the Construction of the Definition of "British Subject" in Section 1 of the Nationality Act, 1914' (1918) 4 *Transactions of the Grotius Society* 35.
 - 38 *Documentary History of the Armed Neutralities 1780 and 1800* (with G W T Omond) (London: University of London Press, 1919).
 - 39 *The Declaration of Paris, 1856* (London: University of London Press, 1919).
 - 40 *The Freedom of the Seas, Historically Treated* (London: HMSO, 1919).
 - 41 'The Season of French Plays: Recollections of "Chantecler"' (1920) 88 *Nineteenth Century and After* 79.
 - 42 'The Ex-Kaiser and His Officers' (1920) 87 *Nineteenth Century and After* 537.
 - 43 'The Greatest Navy in the World' (1921) 89 *Nineteenth Century and After* 511.
 - 44 'The Declaration of Paris and Lord Carteret' (1921) 90 *Nineteenth Century and After* 908.
 - 45 'Practical Notes on Historical Research' (1922) 5 *Transactions of the Royal Historical Society* (4th series) 132.
 - 46 'The Execution of British and Colonial Judgments within the Dominions' (1922) 38 *LQR* 339.
 - 47 'The Free Seas in Peace' (1924) 95 *Nineteenth Century and After* 774.

(Note: This does not claim to be a complete list of all Piggott's publications.)