

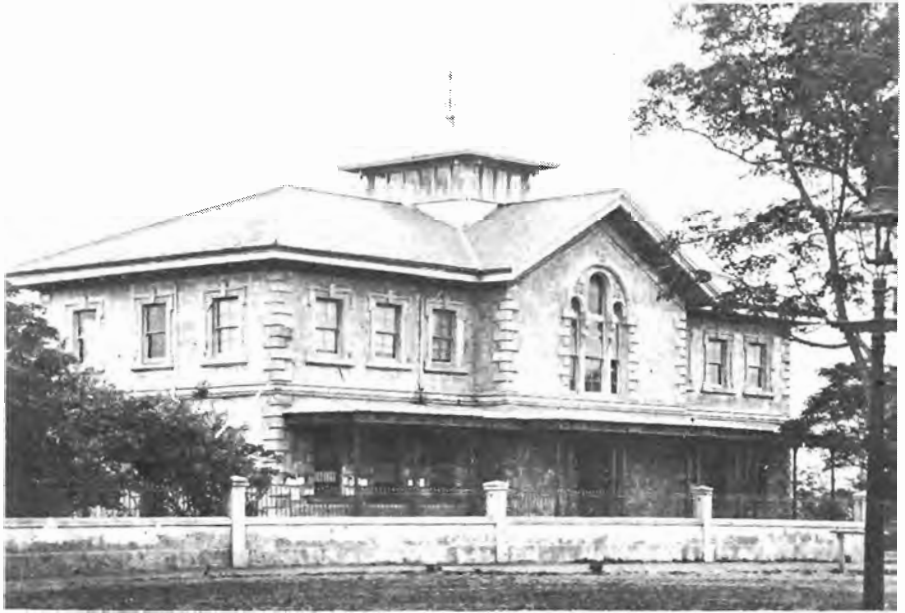
Durban's Court-House: Its opening and early years

Durban's oldest existing public building stands in Aliwal Street, and was opened on 25 April 1866 to serve as Durban's court-house. For the ensuing 44 years, this building remained the focus of legal activity in Durban. Here, the local resident magistrate settled minor civil and criminal disputes. And, at regular intervals, a judge of the Supreme Court in Pietermaritzburg would come on circuit to this hall, and try those cases of greater importance over which the magistrate lacked jurisdiction.¹ In 1910, new law courts were built adjacent to the Esplanade, and the Durban Corporation took over the old court-house, using it for miscellaneous purposes. Finally, in 1965, it was chosen to accommodate Durban's Local History Museum, a function it still performs today.²

For some years prior to 1866, Durban's legal proceedings had taken place in the 'close and awkward' upper storey of a building at the corner of Smith and Gardiner Streets.³ The inadequacy of these premises caused Durbanites to look forward eagerly to the opening of the new hall, with the coming of the Chief Justice to town in April 1866. In the event, the opening of the hall proved to be a rather comical mix of local grandeur and embarrassing deficiencies, as the following account reveals:

An interesting ceremony took place under rather adverse circumstances yesterday. Up to a late day it had been believed that the Circuit Court would have to be held in the old court-room, the new hall not being in a finished state. On Monday evening, however, the deputy sheriff, Mr Russell, received orders to prepare [the central hall] in the new buildings for the reception of the Court. This noble room is so far unfinished that the front door is wanting, and the scaffolding still hides the lofty coved ceiling from view. With the aid of Corporation kafirs and furniture, and other assistance, however, the building was swept out, made gay with flags, and the requisite tables and benches provided. The arrangements indeed having only begun on Tuesday morning reflect credit on the energy of those concerned.

About 10 o'clock the vicinity of the building wore a busy aspect. Outside the palisades a guard of honour, of H.M. 99th Regiment under command of Lieutenant Stephens, Commandant of the garrison stationed here, were drawn up on either side of the approach. Within the outer railings, a guard of honour of the Durban Rifle Guard, our local volunteer infantry force, was ranged on each side of the causeway. The band was stationed outside. Much gratification was



Old Durban Court House before the addition of side wings.

(Photograph: Cape Archives C1725)

expressed with the smart and soldierly appearance produced by the new shakos, whose black and red plumes gave a pleasing variety to the scene. Captain Greenacre, and Lieutenants Jameson and Millett, commanded this force, which had been got together at very short notice.

About half-past ten o'clock, a procession started on foot from the Royal Hotel, comprised of His Excellency Colonel Bisset, Administrator of the Government; His Honour the Chief Justice, Hon. Walter Harding; the acting Attorney-General, Hon. H. Cope; the acting Resident Magistrate, Mr J.W. Davies; the Mayor, Mr R. Tyzack; the Members for the Borough, Mr J. Millar, and Mr J. Robinson; the Colonial Chaplain, Rev. W.H.C. Lloyd; [and other notables].

On arriving at the entrance the usual military salutes were given, while the band played the National Anthem. The procession then entered the building and took their seats, but the want of pre-arrangement here became painfully evident, and we regret much that circumstances have thus prevented any fitting local acknowledgement of the presence of Her Majesty's representative on such an interesting occasion.

After the usual judicial forms had been gone through, [including introductory speeches and presentation of Bibles for the use of the Court] . . . the business of the Court was then proceeded with.⁴

The first Circuit Court in the new court-house opened with a criminal case: one James Andrews, a bricklayer, was charged with and convicted of

the theft of a saddle and bridle, for which he received the sentence of six months' imprisonment with hard labour.⁵ The April 1866 Circuit Court session proved to be a short one, comprising only seven cases, and was concluded the following day. The court-house seemingly provided decent accommodation for the proceedings. The *Natal Mercury* wrote of the 'magnificent Court hall', with only one defect: the lack of accommodation for reporters, a failing 'which in no English court of justice remains willingly unrectified'.⁶

At the August 1866 session, certain significant criminal cases were heard. An Indian, Verasammy, was convicted of having murdered 'another Coolie boy', and became the first person to be sentenced to death in the new court-house.⁷ Then, Robert Fenwick (a White) was convicted of having shot and severely wounded a Black in his right leg and foot. Showing laudable even-handedness of justice (not to be evinced later), Judge Phillips sentenced the convicted Fenwick to two years' imprisonment with hard labour 'as a caution to the inhabitants at large, and . . . to prevent them taking the law into their own hands'.⁸ It was at this trial that the problem of the court's acoustics came to the fore. So great was the reverberation of sound from the domed roof of the central hall, that the judge had to leave his seat and take one on a lower level to hear the evidence, and the jurors complained that it was painful for them to listen to the evidence.⁹ The audience in the Hall could hear only 'a few isolated words — all else was a noise not unlike that made by our harbour bar on a stormy day'.¹⁰ By the end of the month, however, the acoustics had been 'wonderfully improved . . . by the laying of a thick carpeting composed of sacks'.¹¹

The February 1867 Circuit Court was, in certain respects, a very distressing one. Judge Phillips sentenced seven Blacks to death for what the *Natal Mercury* described as 'one of the most diabolical murders ever committed by beings in human guise', caused by the driving of four sharp sticks into the deceased's body, totally embedding them in the flesh about the arms.¹² After the trial, and as the convicts were being led to prison, their wives

commenced a screeching and wailing which were accompanied by frantic expressions of grief, some of the women making endeavours to drag away their wretched prisoner husbands, and when they were prevented from doing this by the police, they threw themselves upon the road, rolled about in utter despair, and wailed their loss and cursed the police alternately.¹³

On the following day, one Evan Evans was convicted of having assaulted the police constable for the borough of Durban with intent to do grievous bodily harm: this he did by catching hold of the constable's nose and attempting to bite it off. Judge Phillips said that this act 'was certainly a very brutish act and an un-English one. It was a dog's act, and would deserve a dog's punishment'.¹⁴ In passing sentence, he noted that he would have thought the convict *less* deserving of punishment if he had abused the policeman *more* than he had done, but in a more manly and English fashion. Significantly, he added that he would have sentenced him to receive lashes, but he shrunk 'from giving the whip to a European if it can be helped. It seems to degrade him and make him feel less a man for the remainder of his

life'. Thus, he simply sentenced him to one month's imprisonment with hard labour.¹⁵ But, the very next case was that of a Black, convicted of house-breaking with intent to commit a rape: Judge Phillips sentenced him to three years' imprisonment and hard labour, and to receive 25 lashes on going into prison, and 25 more on leaving. He added that if this crime was not put down among Blacks 'by the lash, he would feel it his duty to send future offenders to execution'.¹⁶ Judge Phillips, then, had an expressly double standard in meting out criminal justice, in the form of corporal punishment.

The February 1867 Circuit Court was a lengthy one, stretching to nearly three weeks, and involving numerous cases of importance.¹⁷ Not all Circuit Courts were of this order. In fact, it was reported that the June 1867 Circuit was opened by the Chief Justice with the usual 'bally hoo': he was accompanied at the opening by the resident magistrate, the Clerk of the Peace, the Sheriff and the Registrar, and was received at Court by a company of the Twentieth Regiment, with the members of the bar present in their robes. The only shortcoming was the lack of cases that day — and, with no business to transact, the Court adjourned.¹⁸

At the October 1867 session, there occurred a case which gives insight into the conditions of society existing at the time. This was the case *William Anderson v The Natal Railway Company*, where the plaintiff sued for damages as a result of the total destruction of his house at Addington, caused by fire from the engine of the 2.30 p.m. train from Durban to the Point on 5 September 1867. We are told that William Anderson's house was built of burnt brick (with one room made of wattle and daub), that the roof was thatched (with one section covered with iron), and that it had originally cost him £60. The house stood 65 feet away from the railway line and was apparently set alight by sparks coming from the burning wood in the passing train. Chief Justice Harding found the Railway Company guilty of negligent conduct because its employees had known that, when a strong southwesterly wind blew, they were to use coal instead of wood (as coal produced less sparks), and yet had used wood on the day in question when a southwesterly gale was blowing. (The probable reason for the employees' use of wood: it was admitted during the trial that the cost of coal was more than three times that of wood). The Chief Justice thus awarded Anderson damages — totalling £350.¹⁹

The year 1868 passed fairly uneventfully. Of interest was the April session, where a Black (with previous convictions) was convicted of housebreaking with unlawful intent. The Chief Justice sentenced him to receive a total of 150 lashes (over three months) and imprisonment for the term of his natural life. In passing sentence, he stated, rather oddly: 'should you ever appear before me again, for a similar offence, you will assuredly be sentenced to death'. As the *Natal Herald* said: this was 'somewhat Irish, or a slur on the vigilance of the gaol officers'.²⁰ During 1868, further defects in the court-house were noted: the *Times of Natal* complained that it had inadequate facilities (no seating) for jurymen, litigants, witnesses, prisoners and the general audience, and that the court-house had a look of 'heavy clumsiness'.²¹ The Chief Justice remarked that the 'tulchan' chandelier that hung from the skylight was 'very unsteady in its habits, (and) would

probably come down some day, likely enough on the head of the Attorney-General . . . and of any prisoner that might be in the dock at the time'.²²

And so the Court sessions came and went, with the judges and lawyers examining a wide variety of cases, from serious offences to contractual disputes. I shall close with the case that was described by the *Natal Witness* as 'the most remarkable case that the law courts of Natal have yet furnished'.²³ This was the case *Martin Burnell v (Mrs) Bessie Kenion* (assisted by her husband John A. Kenion), heard at the February 1870 session, where the plaintiff recovered £514.4.5 as being due upon the balance of an account. The trial was remarkable because of the string of 'disgraceful and exceptional disclosures' made by Messrs Burnell and Kenion of their business dealings.²⁴ As revealed in letters between the two men (who had been in partnership before they quarrelled), Burnell described his attempts to obtain credit from wealthy Englishmen, through the efforts of a friend:

lots of London first-class men are heare and know him, and me been with him I am thought something of a supearer class. I am introduced to all of them and my object is to select one for £6 000 credit, wich of them it is I do not care, and one of them I will have, make yourself shure of that.²⁵

He admitted telling lies in his dealings, and stated: 'Telling a lie in business is nothing. You must do it'. Kenion, on his part, admitted in a letter to have 'got £30 more than we ought to have in a court case but shall say nothing'. In giving evidence, he admitted to making false entries in his accounts, and acknowledged that he did not mind conniving at wrongful ways as long as he gained by it. The result was that the jury, in giving their verdict, stated that 'the conduct of both Mr Burnell and Mr Kenion, in regard to their business transactions, as disclosed during the trial, so vitiates their credibility, that the jury have relied entirely upon the collateral evidence heard in this case'.²⁶ But, in partial mitigation of Burnell, was the circumstance of his life up to this time. He admitted during the trial that 'he was nothing' in England before he came to Natal; that he 'never had a scholarship' or he might have been a different man; and that he was £70 in debt when he left England.²⁷ Here, then, was a man who (like many early colonists) came to Natal to make a new and prosperous life for himself. Unfortunately, the Natal he came to (that of the late 1860s) was undergoing an economic depression, and the wheeling and dealing ('quirking' as Burnell expressed it) represent his efforts to shore up his financial position — and ultimately to create his paradise of status and prosperity.

The scenes witnessed in the opening and early years of Durban court-house indicate a society of marked contrasts. On the one hand there were the hopes and expectations of the English colonists, who strove to establish a flourishing new England in Natal. On the other hand there were the harsh, alien and at times brutal realities of the Colony itself. Durban's court-house, in its early years, was a symbol of the tension between these two elements: its graceful facade and flourish of English justice often co-existed uneasily with its structural deficiencies and the pattern of litigation conducted within its portals.

REFERENCES

Abbreviations: SC = Supreme Court

- ¹ The local magistrate lacked jurisdiction over crimes punishable by death, banishment or transportation (Ordinance 16 of 1846, section 5), and over civil issues where the matter in dispute was more than £100 (Ordinance 8 of 1852, sections 1 and 5).
- ² *Daily News*, 9 December 1975.
- ³ *Ibid* and *Natal Mercury*, 13 March 1866.
- ⁴ *Natal Mercury*, 26 April 1866.
- ⁵ Natal Archives, SC, 2/1/4.
- ⁶ *Natal Mercury*, 19 May 1866.
- ⁷ Natal Archives, SC, 2/1/4.
- ⁸ *Natal Mercury*, 14 August 1866.
- ⁹ *Natal Herald*, 9 August 1866 and *Natal Mercury*, 9 and 14 August 1866.
- ¹⁰ *Natal Herald*, 9 August 1866.
- ¹¹ *Natal Mercury*, 30 August 1866.
- ¹² *Natal Mercury*, 14 and 16 February 1867.
- ¹³ *Ibid*.
- ¹⁴ *Natal Mercury*, 19 February 1867.
- ¹⁵ *Ibid*.
- ¹⁶ *Ibid*.
- ¹⁷ Natal Archives, SC, 2/1/4.
- ¹⁸ *Natal Mercury*, 8 June 1867.
- ¹⁹ *Natal Mercury*, 26 October 1867.
- ²⁰ *Natal Herald*, 23 April 1868.
- ²¹ *Times of Natal*, 23 June 1868.
- ²² *Natal Herald*, 23 April 1868.
- ²³ *Natal Witness*, 18 February 1870.
- ²⁴ *Natal Mercury*, 22 February 1870.
- ²⁵ *Natal Witness*, 25 February 1870.
- ²⁶ *Ibid*.
- ²⁷ *Natal Witness*, 18 February 1870.

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