

THE EASTERN DISTRICTS COURT

In **1864**, the **Eastern Districts Court**, a local division of the Supreme Court, was established at Grahamstown, having concurrent jurisdiction with the Supreme Court in its area. Normally, in civil cases, two judges were to sit; in the event of an *impasse*, the case would be removed to Cape Town. Appeal lay to the Supreme Court and thence to the Privy Council.¹

In order to provide for the new court, on **26 July 1864**, an Act was passed which enlarged the Bench to **five judges**², **two** of whom were to be assigned to the **Eastern Districts Court**.

Over the next few years, however, as the Frontier wars led to the further **territorial expansion** of the Cape Colony, so also did this lead to the system and hierarchy of **Courts** being accordingly altered and expanded.

In 1866, British Kaffraria, on the Eastern border with the Cape, was incorporated into the Cape Colony, and the functions of the **British Kaffrarian Supreme Court**³ were absorbed by the Eastern District Court, which nonetheless continued to function as a two-judge court.

In **1876**, a full right of appeal was granted⁴ from all convictions to the Supreme Court or, in the Eastern districts, to the Eastern Districts Court, or appropriate circuit court.

¹ This created years of resentment on the part of the judges of the Eastern Districts Court – while equal in status to their brethren at Cape Town, their judgements were checked by the latter, whose own judgements were subject only to the scrutiny of the Privy Council.

² Act No. 21 of 1864.

³ The British Kaffrarian Supreme Court was established in terms of Ordinance No. 10 of 1861 and consisted of a single judge. The judgements of the Court could be taken on appeal to the Judicial Committee of the Privy Council when the amount in dispute exceeded £300. Civil and criminal cases had to be tried by the judge and a jury of nine men, whose verdict had to be unanimous, and in 1864 provision was made to enable civil cases to be tried by special juries. The Supreme Court of British Kaffraria continued to function until 17 April 1866, when the territory was incorporated into the Cape Colony and all proceedings halted and moved to the Eastern Districts Court.

⁴ Act No. 21 of 1876, section 4.

In **1879**, a **Court of Appeal** was established⁵ and the Easterners secured a **third judge** for their court.

Griqualand West

In the interim, in 1871, Griqualand West had been annexed by the Crown and given a High Court with a recorder, with its seat at Kimberley.

When, in **1880**, the territory was **annexed** by the Cape, the **recorder** was given the status of an **additional puisne judge** of the Supreme Court, while retaining his previous jurisdiction and powers. Thus the Supreme Court gained concurrent jurisdiction in Griqualand West, with whom it thereafter enjoyed the same relationship as with the Eastern Court.

In 1882, the Kimberley Bench was enlarged to **three judges** and the structure of all the superior courts was made uniform (Administration of Justice Act, No. 40 of 1882).

In 1882, the jurisdiction of the Supreme and Eastern Districts Courts was extended to the **Transkeian** territories and **Griqualand East**.

In **1900**, crimes arising out of the South African War created pressure on the system. A special court was set up to hear these matters and the quorum of the Supreme Court and district courts was reduced to a single judge. These courts themselves created further pressure and meant that the judges could no longer cope with the work if still required to sit in

⁵ The Court of Appeal was composed of the Chief Justice, the two puisne judges sitting at Cape Town, and the Judge-President. It heard civil appeals from circuit courts and from the E.D.C. and the H.C.G. but, as before, not from the Supreme Court sitting at Cape Town. Appeal lay to the Privy Council as in the past. In criminal cases, the court considered special entries of irregularity and illegality of proceedings and reservations of points of law, from the Supreme Court at Cape Town as well as the other courts. Full criminal appeal on fact from a superior court was still far distant. The Appeal Court was eliminated in 1886 and its powers vested in the Supreme Court, sitting with the Chief Justice, the two members at Cape Town and any other judge specially assigned. Still no civil appeal lay to it from a judgement of the Supreme Court at Cape Town.

pairs in civil trials. Thus, in 1904, such a single member court, termed a divisional court, was empowered to sit at all times.

By 1907, when the diamond rush had ended, the High Court of Griqualand was again reduced to a single judge court.