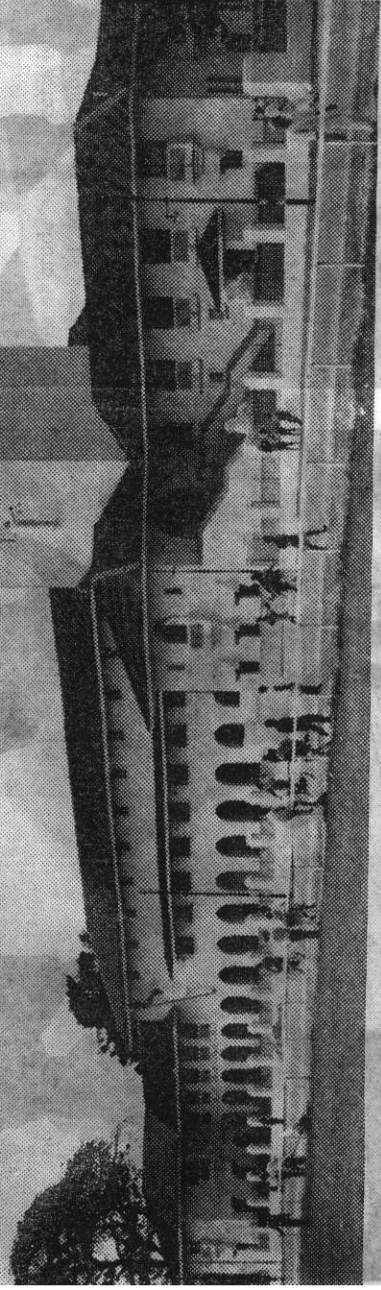


BLENDING OF TWO LEGAL CONCEPTS

By Dr. T. O. ELIAS

The modern supreme court at Lagos, first established in 1876.



ALTHOUGH certain coastal areas of modern Nigeria have had contacts with Europe since 1553 when the Portuguese first reached the right of Benin, the establishment of a British connexion can be dated back to earlier than the eighteenth century. It was a period in which British wellers, traders and missionaries followed each other in rapid succession into various parts of the country in the first half of the nineteenth century. A British rule was effectively established August 6, 1861, over what was then known as the Lagos Settlement which was ceded by King Olofinboba (the Oba) traditional ruler of Lagos. After the establishment in 1862 of the Legislative Council and the Executive Council—the twin pillars of a Crown Colony system of government, English law was formally introduced into the Colony with effect from March 4, 1863. The system of law was set up at the same time, and by 1876 the Supreme Court is established more or less in the form it retains in the present High Court of Lagos. The structure of the legal system, both in the old Lagos Colony and subsequently in the Colony and Protectorate of Nigeria, has been influenced by the (English) Judicature Acts 1873-75 which had in the previous years reorganized the English legal system. Then the Protectorates of Northern and Southern Nigeria were proclaimed January 1, 1900, over the territories which had come under the control of the Niger Company since 1886 as a result of the Southern Yoruba King's and Ibo republics, principles of English common law, statutes of England and the application in England and the Protectorates of English law as they stood at January 1, 1900, were at a time made applicable to Nigeria. It was not affected by the amalgamation of both the Northern and Southern administrations on January 1, 1914, when a unified form of government for the whole country was established together with one legal system, one Chief Justice and one Attorney-General.

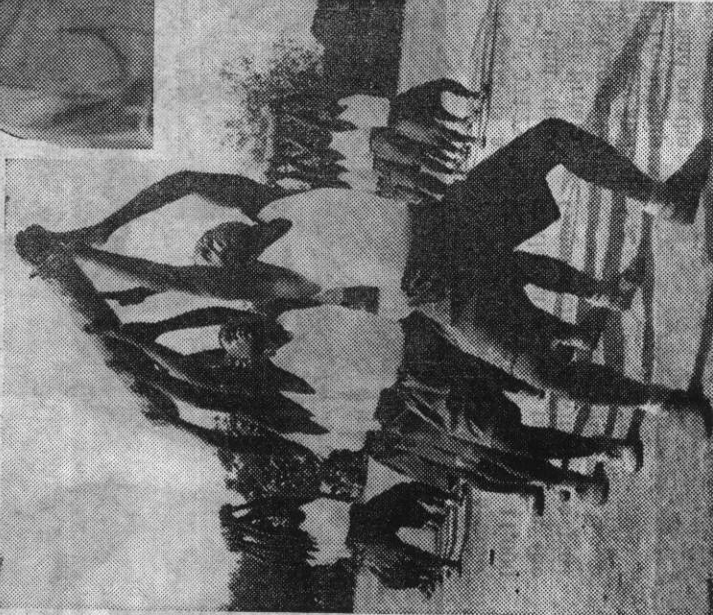
The subsequent history of the development of the legal institutions has been one of rapid development, not only with regard to the greatly expanded jurisdiction of the Supreme Court through its 10 divisions covering the whole country and the network of magistrates' courts presided over by English-trained lawyers, but also in respect of the native or customary courts which were first effectively reorganized in 1933 into four grades according to the extent of jurisdiction exercised. The problem of dualism of courts in a British dependency has been avoided in Nigeria by the integration of the system of the British-established courts and that of the reformed traditional courts of the chief, the pivot of Lugard's well-known experiment of indirect rule first tried out in Northern Nigeria. A noticeable trend in the past decade or so has been the increasing separation of the executive from the judicial work of the native or local authority councils, with consequent gain to the maintenance of the rule of law in a still largely traditional African society.

Of the principal agents of legal development in Nigeria space permits mention of only three. The most important is express legislation by which certain obnoxious and barbarous practices have been forbidden. The second is by the application of what the present writer has described as the doctrine of repugnancy, whereby the courts have disallowed certain alleged customs which are regarded as contrary to "the principles of natural justice, Equity and good conscience"; cases coming under this head may not necessarily be barbarous or obnoxious and, in any case, they must involve points not expressly dealt with in any existing legislation. The third factor is the resort to the reservoir of English law and ideas of justice that a judge may have in cases of doubt or difficulty for which no guidance is to be found in the existing law, whether enacted or customary. The unitary character of the country's legal system was broken up in 1954, after 40 years, by the decision of Nigerian leaders to set up a federal system of government and the inevitable regionalization of the judiciary. Although fears have been expressed in some quarters as to the danger of a

A Tradition of Bravery in Battle

By Major-General K. G. EXHAM

possible regionalization of justice in a country in which the strength of political parties tends to coincide with the regional loyalties of their members, it is nevertheless a measure of the good sense of the Nigerian people and of the deep roots which the English ideas and traditions of impartial justice have struck in Nigeria that there have so far been no developments in that direction. One may be permitted to emphasize that it is at the instance of the Nigerians themselves that a comprehensive set of provisions has been written into the independence constitution of Nigeria guaranteeing certain human rights and fundamental freedoms, which have since been copied into other colonial constitutions. Lawyers will readily recall the unique contributions already made to English law and to English colonial law by a number of epoch-making Nigerian



At the Nigerian training centre, Zaria, recruits undergo a rigorous physical training.

von Lettow Vorbeck in East Africa. A brigade and battery from Nigeria fought throughout the prolonged and arduous operations in Tanganyika; here the fighting was severe, and the turning-point was the battle of Nyango, from which the Germans never recovered. Five battle honours were gained. On its return from active service the regiment, now reduced to four battalions and one battery, settled down to peacetime soldiering. In recognition of their services in the First World War, Colours were presented to the battalions of the regiment carrying the nine battle honours already awarded. In 1928 the whole of the West African Frontier Force became a Royal Corps with King George V as Colonel-in-Chief. At the outbreak of the Second World War the regiment consisted of five battalions and a battery. A brigade group was sent to East Africa in June, 1940, where it rendered distinguished service, especially during the pursuit of the Italians from Mogadishu to Harar and in the final destruction of the enemy forces in South-West Abyssinia. In the former operation the Nigerian Motorized Brigade led the invasion of Abyssinia, covering 1,045 miles in 30 days. The last 65 miles into Harar entailed an advance through most difficult and waterless country and the capture of three strong positions. Nine battle honours were won in this campaign. In the meantime, Nigeria had raised nine new battalions at home. Ten Nigerian battalions fought in Burma during 1944-1945; seven formed part of the 81st and 82nd West African Divisions and three served as Chindits. The former took part in the strenuous fighting in the Kaladan and Kaliapanzin valleys, all seven being engaged at the victory of Myohauing in January, 1945, in which both West African divisions were present. Six battalions fought in the later actions to drive the remnants and pleasure the progress of her army.

Recruits of a bcys' company, N.T.C., receive instruction in the handling of a Bren-gun at Zaria.

THE QUEEN'S VISIT

In 1956 the Queen visited Nigeria and conferred the title of Queen's Own on the Nigeria Regiment and in 1959 the title Royal on the Nigerian Military Forces.

Recently a contingent of the R.N.M.F. visited London to take part in the Royal Tournament and other ceremonial events.

The peoples of Nigeria are many and diverse and this is reflected in the composition of the army. With his virtues of cheerfulness, bravery and loyalty and, above all, his strong sense of discipline, the Nigerian soldier sets an example of unity and stability to his fellow-countrymen in their advance to nationhood. The many thousands of British officers and N.C.O.s who have served Nigeria with honour and devotion in peace and war will watch with pride

THE first force of soldiers in Nigeria was raised in Lagos in 1863 by John Henry Glover, the Administrator of the Government of Lagos. Glover's Hausas, as they were called, were later expanded into colonial forces, and in 1897 the West African Frontier Force was formed under Captain F. D. (later Lord) Lugard to check French aspirations on the Niger and to suppress the slave trade carried on by the Northern emirs from the Niger to Lake Chad.

The Nigeria Regiment came into being in 1901 and originally consisted of two regiments, the Northern and Southern. The regiment has a distinguished history and first saw active service in Ashanti, its first battle honour. From 1900 and up to the First World War the regiment took part in many punitive expeditions to maintain law and order throughout Nigeria and to suppress slave raiding. In the First World War the regiment played a notable part in the conquest of the Cameroons and, later, in the defeat of the Germans under General

decisions; for instance, the Chief Oluwa case, which defines the effect of cession of territory on indigenous rights to land; the Eshugbayi Eleko case, which defines the legal status of a traditional chief in a Crown Colony, and the Habeas Corpus procedure generally; and the John Holt case which extends the ambit of the English law concept of an easement to include the right of one person to store casks on the land of another. But Nigeria has gained far more from English law than she has given to it.

This relatively high reputation which Nigeria enjoys in the Commonwealth has recently been further enhanced by the choice of Nigeria as the seat of its next world conference by the International Commission of Jurists, based in Geneva; this will be the first time this body has met on African soil. It is a just tribute to the success of the interaction between English and Nigerian laws and their unsung administrators, both British and Nigerian, during this past century of evolution.