INTRODUCTION

Over the last 150 years three ‘waves’ of foreign lawyers have ‘invaded’ Japan, each having disproportionate effects upon aspects of its domestic polity and commercial life. This article focuses on the first, predominantly British, wave, which came to Japan after the Ansei treaties ‘opened up’ Japan from 1859. The treaties provided for extra-territorial rights so that if a national of a treaty power committed any crime or incurred any civil liability in Japan, the complainant must bring him exclusively before a consul of that treaty power in one of the treaty ports where there was a consular court.

Under the British extra-territorial regime each Treaty Port had its own British Consul who presided over his own Consular Court subject to the supervision of, from 1865 to 1878, a Chief Justice based in the Supreme Court for China and Japan (Supreme Court) in Shanghai and, thereafter, to a Judge of Her Britannic Majesty’s Court for Japan (HMCJ), established in 1879 at Yokohama.

The British community in Yokohama was very largely composed of traders where many legal disputes derived considerable importance from their commercial nature. It became clear soon after the Supreme Court’s establishment in 1865 that the case-load in Japan — particularly Yokohama — was of a greater volume and importance than had been anticipated so that Sir Edmund Hornby, the Chief Justice, advised that it would become necessary to have a legally qualified judge based in Yokohama to handle the work.

Shortly after qualified lawyers arrived in Yokohama from 1868 onwards to practise before the consular courts, The Japan Times Overland Mail (JTOM) was moved to complain that they sought to overawe legally uneducated Consuls so that ‘an impudent barrister, a feeble judge and some prevaricating witnesses’ made a jest of justice.
When judicial business came to a standstill in 1869 following the sudden death of Marcus Flowers, the Kanagawa Consul, Hornby and Sir Harry Parkes, the Minister, proposed establishing a separate court for Japan by detaching the Assistant Judge from Shanghai to Yokohama. To this end, Nicholas John Hannen was, in 1871, appointed Acting Assistant Judge of the Japan Branch of the Supreme Court to hear all civil and criminal (except capital) cases arising at Yokohama (Yokohama Court).

There was no legislative backing for this *ad hoc* arrangement as the relevant regulations did not contemplate the Assistant Judge’s being resident in Japan. Nevertheless, the Yokohama Court staggered on until the China and Japan Order in Council of 1878 (OC1878) created HMCJ with a Judge and an Assistant Judge in place of the Consular Court at Yokohama. Appeals from the other Consular Courts in Japan lay now to HMCJ instead of the Supreme Court with appeals from HMCJ laying to the Supreme Court. The Judge was to be a barrister of at least seven years’ call and the Yokohama Consul was, *ex officio*, the Assistant Judge. This extra-territorial edifice was run by government employees with the Judges and consuls all being officials. However, as in Britain, many of the Judges had been in private practice — principally in Shanghai — before being raised to the Bench. Of the six Judges responsible for the Yokohama Court and HMCJ, only two (Goodwin and Mowatt) had been career officials in East Asia.

ADMISSION OF LAWYERS TO THE CONSULAR COURTS

As trade followed the flag, so lawyers followed trade and the Judge was authorized to admit ‘fit persons’ to practise before the Consular Courts as barristers, attorneys and solicitors. The legal profession in Japan and the Supreme Court was relatively small so that it was a fused profession with both barristers and solicitors having rights of audience. Most counsel ran their own law offices with clerks to assist them but, occasionally — and more often when a new arrival joined a more established practitioner in Yokohama — counsel practised in partnership with each other. Despite this, the Courts took a practical view and, as with barristers’ chambers, did not prevent one partner acting even where his partner would have been conflicted from acting.3

It was customary for the Judge to admit suitable applicants upon their submitting evidence of admission or call in another appropriate jurisdiction; the only restriction was that Hornby would not admit a person to practise at any Port unless there were two or more eligible persons at such Port to prevent a situation whereby only one side could be represented. In time, greater ceremony was adopted with an