The essay that follows, "Sri Lankan Law Reports as an Historical Source", was written in the late 1980s. It was accepted for publication by a journal that has ceased publication, and thus it never appeared in print.

In recent years I have thought of re-examining these colonial law reports, particularly their introductions, and writing a more substantive essay that would contribute to current debates on the construction of knowledge. At some point I may find the time for this, but it’s unlikely to happen soon. In the meantime, the two bibliographical appendices at the conclusion of this essay may be helpful to researchers, and it is with the intention of making these available that I am publishing this piece on the American Institute for Sri Lankan Studies website.

John Rogers

April 2012
Sri Lankan Law Reports as an Historical Source

John D. Rogers

The intention of this article is to provide an introduction to the use of the law reports of the British period as an historical source. Although the law reports are published, historians are less familiar with them than with many manuscript sources, especially the CO 54 series at the Public Record Office in London. The main exception to this scholarly neglect is Vijaya Samaraweera's article on Indian plantation labour in the nineteenth century, which uses the law reports to show how legislation governing the relationship between British planters and their Indian workers functioned in practice.

Unlike historians, lawyers have long used the law reports as a tool in the pursuit of their profession. Their interest reflects the purpose of the reports, which is to publish Supreme Court decisions that clarify and interpret the law. The cases in the reports are used as legal precedents by lawyers, magistrates, and judges when making arguments or handing down decisions. Because of the importance of these cases to legal practitioners, the contents of many law reports have been summarized in digests and cited extensively in articles and books designed for practising lawyers. From the viewpoint of the historian, the most sophisticated and useful of these works is T. Nadaraja's history of the Sri Lankan legal system. However, as will be explained below, the purposes of the historian and the lawyer differ, and the historian who relies on the secondary legal literature without consulting the original reports risks missing much valuable evidence.

The large majority of cases reported in the law reports are judgments of the Supreme Court on appeals against decisions of the lower courts, that is, the district courts, the courts of request, and the police courts. When the
Colebrooke–Cameron Reforms of 1833 reconstituted the judicial system, the
district courts were given original jurisdiction over all civil and most
criminal cases. The Supreme Court had original jurisdiction over serious
criminal offences and appellate jurisdiction over all district court decisions.
In 1843 a third tier of tribunals, police courts for criminal offences and
courts of request for civil actions, was established to try less serious cases.
The right of appeal from the third tier to the Supreme Court was in most
periods subject to various restrictions, but was usually possible on points of
law. When a fourth tier, the village tribunals, was established in the 1870s,
appeals were allowed only to the government agent and to the Governor. As a
result, the law reports do not include cases from the village tribunals.

The first Sri Lankan law report was published by Charles Marshall, a
retired chief justice of the Supreme Court, in 1839. His volume covers the
years 1833 to 1836, the period immediately following the Colebrooke–Cameron
Reforms, and it provides a detailed account of legal practice in those years.
Marshall expressed the hope that his work would form the model for a series of
up-to-date volumes covering Supreme Court decisions, but no further reports
were published until Alexander Murray's volume of 1848, which covered only
1846–47. It was only in the late 1850s that more reports began to appear. In
the 1860s and 1870s an increasing number were published, many of them covering
only specific courts or subjects. Some had government support, if only in the
form of guaranteed purchases, but others were printed at the financial risk of
the editor.

The haphazard coverage of the early law reports caused much inconvenience
to judges and lawyers. These complaints were summarized by the Supreme Court
Judge Henry Thomson in 1866: 'The decrees of the Supreme Court, when unprinted,
cannot afford instruction to the profession generally; and consequently that
Court has had to decide the same points, often elementary points, over and over
again, because the District Judges, Magistrates, Advocates, and Proctors have had no proper reports to refer to; indeed, even the judges of the Supreme Court itself, having no index to its decisions, have elaborately adjudged many questions of law, in ignorance that those very questions had been as elaborately adjudicated upon years before by their predecessors, or have unwittingly over-ruled those predecessors and even themselves. As a result of such criticisms, in the 1870s the government for the first time gave financial support to the publication of a current and ongoing series of law reports. The first of these periodicals was the Supreme Court Circular (1879). It was followed by the Supreme Court Reports (1892) and finally the New Law Reports (1896), which has continued to appear since Independence.

When the Supreme Court Circular began publication, its first editor, Ponnambalam Ramanathan, a prominent lawyer and future Solicitor-General, began a project to fill in the gaps left uncovered by earlier reports. Between 1878 and 1890 he published five volumes that covered 'missing' years between 1820 and 1877. As a result, for the first time there was an unbroken run of reports from 1820 to the present. However, neither Ramanathan's reports nor the new legal series such as the Supreme Court Circular were comprehensive. Even the New Law Reports should be used in conjunction with its many competitors. Many cases were reported in only one publication, or not at all.

Appendix 1 to this article lists the law reports published during British rule. A few short-lived publications, especially from the twentieth century, may have escaped my notice. The appendix does not include legal guides that may refer to cases, but does include some works of this nature that report court cases in a format set apart from the main text. The titles, 56 in all, are listed alphabetically by the abbreviation that I have provided for the purpose of citing cases. Choosing abbreviations presented some difficulty since many volumes have been referred to in different ways in the legal
literature, and in some instances the same abbreviation has been used for different reports.

Appendix 2 indicates the scope of each report. Entries are arranged by the date of the earliest case included. When a report includes only cases from a particular court or on a specific topic, this is indicated. The failure to include the parties to litigation, the absence of an index, and any other significant features of a particular report are also noted. The appendices, taken together, provide a guide to historical research.

Whatever the type of report, an important factor for the scholar to take into account is the time that elapsed between the year the case was heard and the publication of the report. The compilers consciously sought to leave out cases no longer relevant for lawyers and judges; the more time that had passed, the more likely cases of importance to the historian will have been left out as obsolete. For example, since Ramanathan's reports for 1872, 1875, and 1876 were published in 1890, he omits cases based on law superseded by the legal codes of the 1880s. Appendix 2 shows both the years covered and the date of publication of each law report.

More generally, it must be remembered that all the reports are selective, and include only cases thought to be of use to practising lawyers, that is, cases that illustrate a point of law. Similarly, the editors needed only to give enough detail concerning the case as was necessary to illustrate the legal point at issue. Fortunately from the viewpoint of the historian, some reports include more detail than is required for this purpose.

The collections of decisions the Supreme Court took in 1863 on appeals from the police courts may serve as an example that illustrates the different features of the reports, and the need for the researcher to consult all the appropriate volumes. There are three reports that cover the relevant cases: Beling, Crowther, and Ramanathan's third volume (see Appendix 2). Beling
reports 60 cases, Crowther 49, and Ramanathan 24. But Beling alone is not sufficient, because Crowther reports 7 cases that are not in Beling. Moreover, Ramanathan includes 3 cases that are not in Beling or Crowther, making a total of 70 decisions available. In addition, the three editors choose to include different details about some cases, so it is often useful to check an individual case in more than one volume.

The various digests which seek to index the cases printed in the law reports provide some help to the scholar, but they cannot be relied upon entirely, especially for the earlier periods. The best general work of this kind is S. Rajaratnam, Digest of Cases Reported during the Years 1820 to 1914 (1914 to 1936), 2 vols., (Colombo, 1914, 1936). Many digests leave out cases thought obsolete, and their subject headings are designed for the lawyer or judge who needs information on the legal point at issue, which often differs from the subject of the case itself. For instance, a case of cattle theft that includes a revealing account of the crime and of attitudes towards it might well be indexed under the point of criminal procedure upon which the appeal was brought. The historian interested in cattle theft would probably not be able to find this case from from the index of the volume in question, much less in a digest of many volumes. Sometimes the tedious turning of pages is the only effective option for the researcher.

There are two main types of historical research for which the law reports can be used. First, the reports include essential information about the functioning of the legal system. There is a mine of evidence about how magistrates and judges administered the law, the ways in which people took advantage of their right to appeal, the length of delays in the legal system, and the willingness of the Supreme Court to interfere with the decisions of the lower courts. Similarly, the law reports offer an opportunity to trace the implementation of particular types of legislation. This is the purpose to
which Samarsweera put the reports in his study of plantation labour, which is cited above.

The second type of historical research is to use the reports not only to study the functioning of the legal system and of specific ordinances, but to examine broader topics indirectly touched upon in the descriptions of cases. Possibilities include commercial relations, changes in land tenure, and the status of women. The subject indexes, while helpful, cannot be relied upon for this sort of research, for the incidental detail of the case, often very revealing, was not indexed.

The main problem in using the reports is that they are not comprehensive. The printed reports are a sample of cases decided on appeal. Editors had different criteria for choosing cases. Moreover, even if the reports included all the cases the Supreme Court heard, there would still be the problem of determining the representativeness of the cases for which an appeal was lodged. For these reasons, most research projects using the law reports will also have to make extensive reference to other evidence. It is in conjunction with other sources, both the relatively well mined documents available in London and the more extensive collection at the Department of National Archives, that the law reports can advance our knowledge of the history of modern Sri Lanka.


4. For accounts of Ramanathan's project see the prefaces to his volumes, full details of which are given in Appendix 1.


6. Legal citations differ from the forms usually used by historians and social scientists. Sri Lankan lawyers follow the English practice, which places the volume number before and the page number after the report's abbreviation, without any intervening punctuation. It may be illustrated by the following example: Serahamay v. Rankira (1904), 8 NLR 40. This refers to the case brought by Serahamay against Rankira that was decided by the Supreme Court in 1904 and published on page 40 of the 8th volume of the New Law Reports.
Appendix 1

Colonial Law Reports, arranged by Abbreviations used for References


Austin  Appeal Reports: being decisions of the Supreme Court, on appeals from the District Court of Kandy. Edited by Nathaniel James Austin. (Colombo, 1862).

Balasingham  The Reports of Cases decided by the Supreme Court. Edited by K. Balasingham. 5 vols., (Colombo, 1904-11).

[Balasingham]  See also Notes.

[W. M. Beling]  See Morgan.


Beven & Siebel  Appeal Reports: being decisions of the Supreme Court on appeals from the District Court of Kandy (in continuation of Austin's reports) commencing from 1859. Edited by Edwin Beven and E. L. Siebel. (Kandy, 1877).

[Beven]  See also Joseph and Beven; IM.

Brito  The Mukkuva Law, or the rules of succession among the Mukkuvars of Ceylon. Edited by C. Brito. (Colombo, 1876).

Browne  Browne's Reports of cases decided in the Supreme and Other Courts of Ceylon. Edited by K. G. Dodwell Browne. 3 vols., (Colombo, 1900-02).


CLJ  Ceylon Law Journal: embodying reports and notes of cases. 9 vols., (Colombo, 1936-47).

CLR  The Ceylon Law Reports, being reports of cases decided by the Supreme Court of Ceylon. 3 vols., (Colombo, 1892-97).


[Conderlag]  See Morgan.


Creasy  Creasy's Ceylon Reports: judgments of the Supreme Court between 1859 and 1870. Edited by Harry Creasy. (London, 1876).

Crowther  Decisions of the Supreme Court sitting in appeal. Edited by Jonathan Crowther. (Colombo, 1869).

CTN  Contributions to a Treatise on Nompittement: being reports of cases decided by the Supreme Court and the District Court of Colombo. Edited by Charles Ambrose Lorenz. (Colombo, 1856).


de Kretser  Matara Cases: being a collection of hitherto unpublished decisions by the Supreme Court of Ceylon on appeal from the District Court of Matara. Edited by O. L. de Kretser, 2 vols., (Colombo, 1913-15).
See ACR

Examiner Reports, Issued by the Ceylon Examiner. (Colombo, 1896).

Fernando

Decisions of the Supreme Court on appeals from Police Courts and Courts of Request. Edited by George Fernando. (Kandy, 1878).

Grenier

The Appeal Reports from 1872 (1873, 1874), being reports of cases argued and determined in the Supreme Court of Ceylon sitting in appeal. Edited by Samuel Grenier. 3 vols., (Colombo, 1872-74).

Hayley

Treatise on the Laws and Customs of the Sinhalese, including the portions still surviving under the name Kandy Law. Edited by F. A. Hayley. (Colombo, 1923).

Jayawardene

Court of Appeal Cases of Ceylon. Edited by A. St. V. Jayawardene and others. 4 vols., (Colombo, 1912-16).

Joseph & Beven

A Digest of the Decisions of the Supreme Court delivered in the year 1859. Edited by A. O. Joseph and Edwin Beven. (Colombo, 1863).

JSC

The Judgments of the Supreme Court of Judicature and the High Court of Appeal of the Island of Ceylon delivered between 1820-1833. Edited by Ponnambalan Ramanathan. (Colombo, 1877).

Koch

Supreme Court Decisions in Appeal during 1899. Edited by Gladwin Koch. (Colombo, 1900).

Leader

The "Leader" Law Reports, being reports of current decisions of the Supreme Court of Ceylon. 6 vols., (Colombo, 1907-12).

Leembruggen

Supreme Court Decisions in Appeal during 1905 (1906, 1907). Edited by G. H. P. Leembruggen (vol. 1), Leembruggen and R. N. Asirvatham (vol. 2), and Asirvatham (vol. 3). 3 vols., (Colombo, 1906-08).

LM

The Legal Miscellany. Periodical. Vol. 1 (Colombo, 1853-54) was probably edited by Richard Morgan. Vol. 2 (Colombo, 1864-67) was edited by E. Beven and A. Mills.

Lorenz

The appeal reports: being reports of cases argued and determined in the Supreme Court of Ceylon sitting in appeal. Edited by Charles Ambrose Lorenz. 3 vols., (Colombo, 1860-71).

Marshall

See also CTN; Weinman.


Mills

See LM.

Morgan


[R. Morgan]

Murray

Cases heard and determined in appeal by the Supreme Court of the Island of Ceylon from December 1846 to August 1847. Edited by Alexander Murray. (Colombo, 1848).

Mutukisna

New Edition of the Thesawaleme, or Law and Customs of Jaffna; together with decisions of the various courts on the subject, 1801-60. Edited by H. F. Mutukisna. (Colombo, 1862).
Courts of Request: a practical treatise on their constitution and mode of procedure, including a selection of circulars, correspondence and forms, decisions of the Supreme Court on reviews and appeals, ... and an appendix. Edited by Louis Nell. (Colombo, 1858).

See also Tolls.


Notes of Cases decided by the Supreme Court of Ceylon. Edited by K. Balasingham. 5 vols., (Colombo, 1914-18).

See Times.


See Morgan.

Reports of important cases heard and determined by the Supreme Court of Ceylon. Edited by Ponnambalam Ramanathan. 5 vols., (Colombo, 1878-90).

See also JSC.


Revised reports of Ceylon: being a re-publication of all such cases of the Supreme Court of the Island of Ceylon (reported from the year 1820) as are still of practical utility. Edited by Isaac Tambyah. (Tellippalai, 1905).

Revised Reports of Ceylon Cases. Edited by S. Ramanathan. (Tellippalai, 1922).

Sawers

Digest of Kandyen Law, with an appendix containing orders of the Supreme Court in Cases decided in Appeal bearing on the Kandyen Law from 1851 to 1860. Edited by Simon Sawers. (Colombo, 1860; reprint in 1900).

Supreme Court Circular. 9 vols., (Colombo, 1879-92).

Supreme Court Reports. 3 vols., (Colombo, 1892-96).

Siebel

Liability of estate owners and of superintendents: being a collection of important decisions on the subject, by the Supreme Court and the District Court of Kandy. Edited by E. L. Siebel. (Colombo, 1877).

See also Beven & Siebel.

The Law of Maintenance: being a collection of cases on the subject decided in appeal under the Vagrant Ordinance. Edited by W. Sinnacutty. (Jaffna, 1878).

Decisions of the Supreme Court on appeals from Courts of Request, 1861-67. Edited by F. C. Solomons. (Kandy, 1871).

Tambyah's Reports, being reports of cases decided by the Supreme Court of the Island in appeal. Edited by Isaac Tambyah. Title varies; most volumes were printed as part of the periodical Ceylon Law Review. 7 vols., (Colombo, 1899-1912).

See also CCL.


See also SCC Digest.

Toll Cases. Edited by Louis Nell. (Cotta, 1858).

The decisions of the Supreme Court sitting in appeal, from 1869 to 1871. Edited by John William Vanderstraaten. (Colombo, 1874).

See also Beleg.
Weerekoon

[Weerasinghe] See ACR.

Weinman

Contributions to a treatise on Nampitissement: being reports of cases decided by the Supreme Court of Ceylon. Edited by James R. Weinman, based on the earlier edition (CTN) by Charles Ambrose Lorenz. (Colombo, 1881).

Wendt

Reports of cases argued and determined in the Supreme Court of Ceylon, sitting in appeal during the years 1882-1883. Edited by Henry Lorenz Wendt. (Colombo, 1884).

Wijeyewardene

The Supreme Court Decisions in Appeal. Edited by E. A. L. Wijeyewardene. (Colombo, 1913).

[Wijeyewardene] See also Cooray.
# Appendix 2

**Scope of Colonial Law Reports**

<table>
<thead>
<tr>
<th>Report</th>
<th>Years Covered</th>
<th>Date Published</th>
<th>Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutukisna</td>
<td>1801–60</td>
<td>1862</td>
<td>customary law of Jaffna</td>
</tr>
<tr>
<td>Hayley</td>
<td>1818–29</td>
<td>1923</td>
<td>Kandyan law</td>
</tr>
<tr>
<td>JSC</td>
<td>1820–33</td>
<td>1877</td>
<td>general</td>
</tr>
<tr>
<td>RRC</td>
<td>1820–99</td>
<td>1905</td>
<td>all cases are drawn from earlier printed reports, mainly Morgan and Ramanathan; no criminal cases; arranged by subject</td>
</tr>
<tr>
<td>CTN</td>
<td>1830–55</td>
<td>1856</td>
<td>namptissemnt (law of provisional payment); includes cases decided by Colombo district court</td>
</tr>
<tr>
<td>Weinman</td>
<td>1830–81</td>
<td>1881</td>
<td>namptissemnt (law of provisional payment); revised edition of CTN; omits cases decided by Colombo district court; includes 13 cases decided after 1856. arranged by subject; names of parties not included</td>
</tr>
<tr>
<td>Marshall</td>
<td>1833–36</td>
<td>1839</td>
<td>general; names of parties not included from 1833–37</td>
</tr>
<tr>
<td>1 Morgan</td>
<td>1833–42</td>
<td>1857</td>
<td>general; names of parties not included from 1833–37</td>
</tr>
<tr>
<td>Austin</td>
<td>1833–59</td>
<td>1862</td>
<td>Kandy district court; very few criminal cases; arranged by subject; names of parties not included</td>
</tr>
<tr>
<td>Perera</td>
<td>1833–89</td>
<td>1892</td>
<td>Kandyan law; all cases are drawn from earlier printed reports; arranged by subject</td>
</tr>
<tr>
<td>Tolls</td>
<td>?</td>
<td>1858</td>
<td>toll cases</td>
</tr>
<tr>
<td>2 Morgan</td>
<td>1843–52</td>
<td>1862</td>
<td>general; more cases than 1 Ramanathan, but with less detail; no index</td>
</tr>
<tr>
<td>1 Ramanathan</td>
<td>1843–55</td>
<td>1884</td>
<td>general</td>
</tr>
<tr>
<td>Brito</td>
<td>1844–71</td>
<td>1876</td>
<td>law of Mukkuvars of Batticaloa; 8 cases, including decisions of Batticaloa district court</td>
</tr>
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<td>Nell</td>
<td>1845–55</td>
<td>1858</td>
<td>courts of request; names of parties not included</td>
</tr>
<tr>
<td>Murray</td>
<td>1846–47</td>
<td>1848</td>
<td>general; no index</td>
</tr>
<tr>
<td>Sinnacutty</td>
<td>1846–76</td>
<td>1878</td>
<td>law of maintenance; names of parties not included</td>
</tr>
<tr>
<td>1 Beling</td>
<td>1846–62</td>
<td>1863</td>
<td>police courts; names of parties not included</td>
</tr>
<tr>
<td>RRRC</td>
<td>1847–70</td>
<td>1922</td>
<td>selected cases from Creasy, Joseph &amp; Beven, Murray, and Solomons</td>
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<td>Savers</td>
<td>1851–60</td>
<td>1860</td>
<td>Kandyan law</td>
</tr>
<tr>
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<td>1852–53</td>
<td>1853–54</td>
<td>general; names of parties not included; some sections have no index</td>
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<td>1856–57</td>
<td>1860</td>
<td>general</td>
</tr>
<tr>
<td>2 Lorenz</td>
<td>1858</td>
<td>1866</td>
<td>general</td>
</tr>
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<td>1871</td>
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<td>1877</td>
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<td>1876</td>
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<td>1863</td>
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<tr>
<td>Beven &amp; Siebel</td>
<td>1859-67</td>
<td>1877</td>
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<td>1860-62</td>
<td>1880</td>
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<td>Solomon</td>
<td>1861-67</td>
<td>1871</td>
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<td>Crowther</td>
<td>1863</td>
<td>1869</td>
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<td>1869</td>
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<td>1865-76</td>
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<td>1872</td>
<td>1872</td>
<td></td>
</tr>
<tr>
<td>4 Ramanathan</td>
<td>1872/5/6</td>
<td>1890</td>
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<td>1873</td>
<td>1874</td>
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<td>5 Ramanathan</td>
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<td>1878-91</td>
<td>1879-92</td>
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<td>1882-83</td>
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<td>Tambyah</td>
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<td>1899-1910</td>
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<td>1912-16</td>
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<td>1913-15</td>
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<td>1936-46</td>
<td>1936-47</td>
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- Liability of estate superintendents; 20 cases, all but one from Kandy District Court; considerable detail; no index
- Civil; names of parties not included; arranged by subject; no index
- Kandy district court; most cases are from 1860-62; no criminal cases; no index
- Courts of request; 37 cases; most names of parties not included
- General; names of parties not included
- General
- Police courts; names of parties not included
- Police courts and courts of request; most cases from Kandy and Panvila; most cases from 1875-76
- General; names of parties not included
- Police courts; names of parties not included
- General
- General; names of parties not included
- General; names of parties not included
- General; names of parties not included
- General
- General; names of parties not included
- General
- General; includes many 19th century cases
- General; includes cases not reported elsewhere
- Matara district court; no criminal cases
- General
- General
- General
- General; includes a few cases from 1872-94, some previously unpublished; continues after 1948
- General
- General; no index
- General; includes a few cases from before 1900
- General; includes a few cases from before 1903
- For 1904-05 includes a digest of reports published elsewhere; for 1905-06 includes brief summaries of previously unpublished cases; no index for 1906
- General
- General; no index
- General; includes a few cases from before 1907
- General
- General
- General; some cases have little detail
- Criminal cases
- General
- General
- General
- General; continues past 1948
- General; vols. 7-9 have no index