

CHAPTER XVII.

THE CHANGES OF 1781.

On the morning of August 17th, 1780, Hastings and Francis, accompanied by their Seconds, met beneath the trees of Alipur to fight the historical duel, which formed the dramatic climax of the six years' controversy at the Council Board.¹ On December the 3rd Francis sailed for England, and the removal of his dangerous opponent may perhaps have supplied the opportunity for Hastings to return to a long cherished design of restoring that revenue organisation, which planned in 1772, had in the following year been supplanted by temporary expedients. The important step was taken on the 20th February, 1781, and the opening paragraph of "the permanent plan" adopted on that day commences with an explanation :

"The system which yet subsists, though with many essential variations, of superintending and collecting the public revenue through the agency of Provincial Councils, was instituted for the temporary and declared purpose of introducing another more permanent mode, by an easy and gradual change, by which the effects of too sudden an innovation might be avoided. This permanent plan is methodically and completely delineated in the same proceedings of 23rd of November, 1773, of this department, in which the Provincial Councils were established. It consists substantially in this: that all the collections of the Provinces should be brought down to the Presidency, and be there administered by a Committee of the most able and experienced of the covenanted servants of the Company, under the immediate inspection of, and with the opportunity of instant reference for instruction to the Governor General and Council."

To give effect to this design, it was determined :

1. "That a Committee of Revenue, consisting of four covenanted servants of the Company, be immediately constituted; who shall be intrusted with the charge and administration of all the public revenues of these provinces, and invested, in the fullest manner, with all the powers and authority, under the control of the Governor-General and Council which the Governor-General and Council do themselves possess and shall not reserve exclusively to themselves."²

¹ Busted: *Echoes from old Calcutta*. Chap. vi.

² The first to be appointed to this Committee were David Anderson, John Shore, Samuel Charters, and Charles Croftes. Anderson was, however, far too busy in conducting Hastings' political work, to be able to attend the meetings of the Revenue Committee. Shore had been much attached to Francis, and his appointment is a token of Hastings' impartiality. Croftes, a close friend of Hastings', was ultimately compelled to relinquish this high office, and go as Chief to Chittagong, then regarded as a health-resort, where he died.

2. (Art. 3). "That the Provincial Councils shall be dissolved, and their charge and powers transferred to the Committee of Revenue; that the members of the Councils be ordered forthwith to repair to the Presidency, except the Chiefs of each, who shall remain in the temporary charge of their respective divisions, under the authority of the Committee, untill such time as they shall be recalled by the orders of the Governor-General and Council."
3. (Art. 4). "That the Collectors of the separate districts shall in like manner remain in their respective stations, under the authority of the Committee, until such time as they shall be recalled by order of the Governor-General and Council."
4. (Art. 5). "That the office of Superintendent¹ of the Khalsa Records shall be abolished, and the office of the Khalsa, with all its dependent offices, and all the functions and powers appertaining to it, shall be transferred to the Committee of Revenue."
5. (Art. 6). "That the Canongoes shall be re-instated in the complete charge and possession of all the functions and powers which constitutionally appertain to that office."²

This measure was designed to carry out the essential points of Hastings' revenue policy of 1772-73, and to bring the revenue administration to centre at Calcutta. The objection to the measure was that the Provincial Councils being in closer touch with the districts grouped round them were more likely to possess adequate local information than a central Revenue Committee at Calcutta. To such an argument the reply would lie in the superiority of the European Collectors to the Native Naibs, and the advantages which the wider experience of a picked body of expert servants was bound to have over merely local Councils largely composed of juniors in the service. To the objection that the appointment of a Committee was an infringement on the powers of the Council, the reply would be that the Committee were dependent on the Council and that in fact what the Committee took over was not the supreme control of the Council, but the control hitherto vested in the Provincial Councils. At the impeachment of Warren Hastings, however, a corrupt motive for making this change was imputed to the Governor-General, and it was represented that he had, after praising the Provincial Councils, abolished them, in order that he might offer places of increment to the various vile people

¹ The office of Superintendent of the Khalsa Records had been created by Hastings, and the first to hold it was the able and adventurous youth, Alexander Elliot, a younger brother of the first Lord Minto. At the time of its abolition it was held by G. G. Ducarel. An officer called "Preparer of Reports to the Board of Revenue" was appointed, and the first to hold this appointment was Jonathan Duncan, who ultimately became Governor of Bombay, and deserves a prominent place in any Indian temple of philanthropic fame.

² Colebrooke: *Op. cit.*, pp. 213-20. The remaining articles relate to details of business.

from whom (it was alleged) he received bribes. The fact that he had from the very first intended the Provincial Councils to serve only temporarily was quietly and skilfully hushed up.

The restoration of the collectors, according to Sir William Hunter, represents a "swing of the pendulum" from trust in native agencies coupled with mistrust in English and trust in English agencies coupled with mistrust in native. It was rather the result of a more generous belief in the capacities of an honest Englishman to do good service, and educate his native colleagues in the service. Under the Provincial Council system a number of the Company's servants had been stationed at the provincial capitals where the bulk of the business passed before them as transactions to be conducted on paper. Taken away from the capitals, where the Provincial Councils had corporately dealt with the details of rural administration *en bloc*, and given districts of their own to manage, real living persons instead of papers to deal with, and a responsibility for failure as well as a defined scope for ambition, the Company's servants were bound to improve in assiduity, honesty, and experience. The failure of the English government hitherto had been largely due to an inability to realise the demand which the administration of so vast a country would make for the provision of English servants to superintend the districts. The Diwani had seemed to provide an almost adequate administrative instrument of government ready to the hand of the Company. During the year of the great famine, the instrument had gone on working, while the revenue in almost undiminished volume came into the Company's treasury; but facts had shewn that the machinery of the native Revenue administration, left to do its work apart from a powerful control, would bring the country producing the revenue to ruin. The inadequacy of the cadre of the Company's servants made it difficult to provide the English officers required for revenue and judicial work in the districts, but slowly it came to be understood that, difficult as the task might prove itself to be, the district officers for the Diwani lands must either be found, or the oppressions so often complained of would increase and render the Company's position in Bengal intolerable. It is misleading to say, that the measure of February, 1781, marks the commencement of a direct English rural administration in Bengal; but the fact that such a view has been stated by authoritative historians is a token of the importance of the measure.

In the same year the Diwani judicial system was strengthened by the creation of new mufassal adalats. In four out of eighteen districts,—*viz.*, at Chupra, Boglepore, Chittagong, and Rampur, the Collector was to be Collector and Judge; at the other fourteen, *viz.*, Midnapore, Patna, Darbanga, Taujepore, Nattore, Dacca, Bakarganj, Masey, Rajhat, Sultansi, Murli, Calcutta, Burdwan and Murshidabad the Judge was to be without any concern in the revenue administration.

Having reconstituted the Sadar Diwani Adalat and placed it under the able management of Sir Elijah Impey, Hastings was in a position to deal with the Faujdari Adalats, or criminal courts, which still in theory

depended on the Naib Nazim at Murshidabad. Under the Regulations of August 21st, 1772, the Collectors of revenue, had been charged with the duty of superintending the officers of the Faujdari courts, to see that the necessary witnesses were summoned and examined, that due weight was given to their evidence, and that the decisions were impartially and fairly given. When the Murshidabad Comptrolling Council was abolished, the Sadar Nizamat Adalat at Murshidabad was brought down to Calcutta, and placed under the charge of a *darogha*, subject to the control of the President of the Council, who, on behalf of the Nawab, revised the sentences of the criminal court in capital cases. The establishment of the Supreme Court, as has been seen, had the effect of bringing the Sadar Diwani Adalat into abeyance; and it was no doubt due to the same circumstance that on October 18th, 1775, the Supreme Court sent the Nizamat Adalat back to the old capital, and placed it under the charge of Mahomed Reza Khan as Naib Nazim.¹ In 1774 the Collectors had been recalled, and in the districts the Faujdars, assisted by law-officers of various descriptions, held courts and acted as magistrates of the peace. The proposals of Hastings and of Francis in 1775 to receive the police jurisdiction of the zamindars have been noticed in a previous chapter.

On April 6th, 1781, Hastings brought forward a measure, designed to supplement the Faujdari courts. These courts were to continue their operations, and to remain under the superintendence of the Naib Nazim, but the English Judges of the Diwani Courts were appointed magistrates, and invested with power to apprehend persons charged with crimes and misdemeanours, and to commit the same to the nearest Faujdari Court for trial, judgment being reserved to the Nizamat. The measure tended to strengthen the hands of the English district officers, and to secure the peace of the districts; it deprived the faujdar of the easy excuse that the prevailing influence of the British officer robbed him of his moral power; and made it impossible to plead that he would deal severely with the law breaker, if he could catch him but to catch him was beyond his power. The measure bore away the first and perhaps the most difficult obstacles which, but for this measure, Lord Cornwallis would have met with in 1790, when the Courts of Circuit were introduced to deal in the first instance with persons charged with crimes and misdemeanours.

Mention at least should be made in this place of Impey's Civil Procedure Code, drawn up for the use of the Sadar and Mufassal Diwani Adalats. Thirteen articles were put forth on the 3rd of November, 1780, and on the 5th of July in the year following a revised regulation, of ninety-five articles was issued—"the first attempt to codify the law of Civil Procedure in British India."² A Persian translation by William

¹ The Faujdari prison, known by the Hindu name of Harinbari (deerhouse) however still continued to exist in Calcutta. See *Bengal: Past and Present*, vol. viii, pp. 64-82.

² Acharyya: *Codification in British India*. Tagore Law Lectures, Calcutta, 1914, p. 55. In 1773 Warren Hastings set a committee of Pandits to work on a code of "Gentoo" laws. The code was compiled and translated into English by N. B. Halhed. See Appendix A. to Mr. Acharyya's work. The Halhed or Hastings' Code deals with both adjective and substantive law.

Chambers¹ appeared in 1781, and a Bengali translation by Jonathan Duncan (afterward Governor of Bombay and a famous humanitarian statesman) in 1783.²

The Act of Parliament (21 Geo. III. c. 70), passed in 1781, was designed to remedy "the ruinous mistake of" the Regulating Act of 1773. By indemnifying the Governor-General in Council and the Advocate-General for transgressions of the law in opposition to the Judges, the Act of 1781 practically denied the attitude of the Judges in the conflict with the Executive to have been, according to the letter of the law, theoretically correct, but the preamble referred to "misunderstandings and discontents," "fears and apprehensions" due to the "dissent between the Judges and the Governor-General and Council" and pointed at "further mischief" which might ensue "if a reasonable and suitable remedy be not provided." The provisions of the Act may be summarily stated as follows :

1. The Governor-General and Council, jointly or severally, were declared not subject to the jurisdiction of the Supreme Court "for or by reason of any act or order, or any other matter or thing whatever, counselled, ordered, or done by them in their public capacity and acting only as Governor-General and Council."³
2. At the same time it was declared that the Supreme Court should have no jurisdiction in matters concerning the revenue or acts ordered and done in the collection thereof according to the practice of the country, and the regulations of the Governor-General and Council, and it was provided that mere employment by the Government, the Company, or by a native of Great Britain should not in itself render the person so employed subject to the jurisdiction of the Supreme Court in matters of inheritance to lands or goods, or in matters of contract and dealing between party or parties, except in actions for wrongs or trespasses, and also except in any civil suit by written agreement of parties to submit to the Court's decision.⁴ Persons exercising judicial offices in the Indian Adalats, and persons acting under such authority, were not to be amenable to actions for wrong or injury in the Supreme Court.
3. The 17th section of the Act, in empowering the Court to determine all actions and suits against the inhabitants of the

¹ A brother of Sir Robert Chambers and a translator into Persian of a part of the New Testament.

² The sweeping remarks made by Marshman in his work on the great Serampore missionaries as to the neglect of the Bengali language by Englishmen, prior to the advent of Carey, must be taken *cum grano*.

³ Cowell : *The History and Constitution of the Courts and Legislative Authorities in India*. Tagore Law Lectures, 8th edition, Calcutta 1905, p. 53.

⁴ *Ibid*, p. 54.

city of Calcutta, provided that "their succession and inheritance to lands, rents, and goods, and all matters of contract and dealing between party and party, should be determined in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentoos by the laws and usages of Gentoos; and where only one of the parties should be a Mahomedan or Gentoos by the laws and usages of the defendant."¹ Power was conceded to frame suitable process in criminal and civil suits against the natives of the Presidency with a view to the religious and social customs and manner of the people.

4. The Courts dependant on the country constitution were recognised, and recognition was given to the authority of the Governor-General and Council in framing regulations for such courts.

Professor Cowell has pointed out that in the Act of 1781, as also in the Act of 1773, the phrase *British subjects* is used in such a way as necessarily to exclude from its meaning the Hindu and Mahomedan inhabitants. The distinction between the inhabitants of the Company's factories and the millions under the Mughal imperium was to live on for at least another eighty years or in the distinction between the Presidency Towns and the Mufassal.

¹ *Ibid*, p. 56.