CHAPTER II

THE RECONSTITUTION OF THE SADAR COURTS

At the beginning of the 19th century the business of the Sadar Dewani Adalat and Nizamat Adalat had so increased in volume and importance as to "furnish sufficient occupation to require from the Governor General and Members of Council the entire sacrifice of every other duty"[a]. It had become clear that it was impracticable for the members of the Government to act both as judges and administrators, and Lord Wellesley decided that the Sadar Courts must be reconstituted. In addition to expediting the efficient administration of justice, the Governor General wished to bring about at least a partial separation of the judicial from the executive and legislative functions of government[b]. New courts were accordingly established in 1801[1]. The Sadar Dewani Adalat and the Nizamat Adalat was each to consist of a Chief Judge and two puisne judges (styled respectively the second and third judges) appointed by the Governor General in Council. The office of Chief Judge was to be held by a member of Council, other than the Governor General or the Commander in Chief, and the remaining judges were to be covenanted servants of the Company, not members of Council, able to devote their whole time to judicial business. The Chief Judge in fact held, in addition to his judicial appointment, high office in the Government, usually as President of the Board of Revenue or of the Board of Trade, and he could give little time to judicial work[c]. His appointment as Chief Judge was in truth nominal; the work was done by the puisne judges, and the Court's independence can fairly be said to date from 1801[d].

---

a Lord Wellesley's Minute, recorded in Civ. J.C., 12 Mar 1801, no. 1. P/147/49. This Minute, which states at length the reasons for the reconstitution of the Sadar Courts in 1801, is printed in the Appendix to this Chapter.

b This was a matter upon which Lord Wellesley held a decided opinion. He writes of the Government of India possessing, as things stood, "the means of abuse without impediment" and of the need of "an efficacious check....to any disposition in the Government tending towards the perversion of the course of justice": *ibid.*

1. Regn. 2 of 1801.

c Henry Colebrooke, who was appointed Chief Judge in 1805, said that his predecessor, Sir George Barlow, "was never able to give any attendance in either Adalat"; Civ. J.C., 17 Dec. 1811, no. 1. P/148/71.

d The independence of the judges was qualified. They remained servants of the Company, they lacked security of tenure and they could look to the Company for elevation to high administrative office: see Ch. XVIII below.

The Directors approved of the transfer of the Government's judicial functions to the new Courts, but they were at first hesitant to agree with the Governor General that such supervisory powers as they had formerly possessed were now unnecessary[2].

The volume of judicial business continued to increase, and in 1805 the Governor General decided to sever the Court's direct link with the Supreme Council and to make provision for the Court's work to be done by three whole-time judges. This end was achieved by Regulation 10 of that year which provided that each Court should consist of a Chief Judge and two puisne judges, all of whom would be covenanted servants of the Company but none a member of Council. The Governor General had not however considered it necessary to consult the Directors before making this change; and the Directors, when they came to hear of it, disapproved. In addition to objections on financial grounds and to the manner in which the change; was effected[e], the Directors shared neither the Governor General's view that the administration of justice was promoted by the separation of powers nor his opinion that an increase in the number of judges was essential. As to the former, they did not consider that any advantage was gained by the exclusion of a member of the Government from a share in the judicial administration, and as to the latter they bluntly declared that they were "decidedly of the opinion that all the functions of those Courts may be duly and effectually administered by two Puisne Judges, with the occasional assistance of a member of the Supreme Government as Chief Judge, whose avocations as a Member of Council we do not conceive to be so numerous, or that Councils are so frequently held as entirely to prevent him from bestowing a portion of his time on the duties of Chief Judge of these Courts"[3]. They required the Governor General in Council to annul Regulation 10 of 1805 and to revert to the position which existed immediately before it was passed. The Directors' letter did not reach India until July 1807, and the course of events in the intervening two years had confirmed, in the Governor General's opinion, the need for three full-time judges if an accumulation of arrears was to be avoided[f]. The Governor General in Council resolved the difficulty by deciding that as the Chief Judge must, in accordance with the orders of the Directors, to be member of Council, the number of puisne judges should be increased from two to three. This plan was given legal effect by Regulation 15 of 1807. The Directors acquiesced, but reluctantly, and expressed doubt as to whether the amount of criminal work was such as to justify the Nizamat Adalat sitting for two days a week throughout the

2. Judl. Letter to Bengal, 28 Feb. 1805, para 3.

e "We expect that no changes of importance shall actually be made until our opinion shall have been taken on the propriety of them". Judl. Letter to Bengal, 7 Jan. 1807 para. 11.

3. Judl. Letter to Bengal, 7 Jan. 1807, para. 12.

f Civ. J.C. 21 July 1807, no. 1, P/148/38. The number of courts under the authority and control of the Sadar Courts had increased from 34 in 1801 to 51 in 1807; *ibid.*

year[4]. In February 1812 (but before they heard of the further change in the constitution of the Court made in 1811) the Directors reverted to the subject. Although they agreed that the separation of the judicial and executive powers was no doubt theoretically just, they saw "no inconvenience whatever in placing one of the members of Council at the head of the Department". They regretted that the great increase in the business of the Court had compelled them to acquiesce in the increase in the number of judges, but they felt obliged to accept the situation for they were unwilling, after so much delay, to run the risk of what they described as "an inconvenient arrear in the administration of justice"[5].

In 1811 the constitution of the Court was again altered, but this was for the last time. The continued increase in the volume of the Court's work, due in part to new legislation[g] and in part to the extension of the Court's jurisdiction to the Ceded and Conquered Provinces[h], made it necessary to empower the Government to add to the number of whole-time judges. Regulation 12 of 1811 was accordingly passed on the 27th August of that year; it provided that the Sadar Dewani Adalat and Nizamat Adalat should in future consist of a Chief Judge "and of as many puisne judges as the Governor General in Council may from time to time deem necessary for the despatch of the business of those Courts". The Regulation did not direct that the Chief Judge should not be a member of Council but such was undoubtedly the intention of the Government which had become convinced that the separation of the judicial from the executive power could no longer be delayed. The increase in the number of civil cases to which the Government was a party made it, in the view of Lord Minto, the Governor General, a matter of paramount importance that the public should be convinced of the Court's impartiality[j]. The matter had been given added emphasis by the case of Charles Reed. Reed, a man of mixed parentage (his father had been in the Company's service) had for some years sought to obtain from the Government and the Sadar Dewani Adalat redress for gross irregularities alleged to have been committed by a zillah judge in the course of a judicial enquiry. His efforts were unsuccessful; and under

4. Judl. Letter to Bengal, 14 Sep. 1808, para. 7.

5. Judl. Letter to Bengal, 14 Feb. 1812, para. 33.

g Particularly Regn. 8 of 1808 which enhanced the penalty for gang-robbery to imprisonment for life, a sentence which required confirmation by the Nizamat Adalat.

h It was extended to the Ceded Provinces in 1803 and to the Conquered Provinces in 1804 and 1805: see p.14 below and Map. 1.

i The figures are set out in a Minute by Henry Colebrooke of the 23rd August 1811, in which he points out that the average number of trials before the Nizamat Adalat, which in the years 1804-1807 was 209, had more than doubled in the ensuing two and a half years—the annual figures being 346 in 1809, 492 in 1810 and 303 for the first six months of 1811: Civ.J.C., 27 Aug. 1811, no. 1, P/148/70.

j A conviction which, in Henry Colebrooke's words "the people can never have.... while the President of the Board of Revenue or of the Board of Trade is even nominally Chief Judge of the Sudder Court of Appeal": Civ.J.C. 17 Dec. 1811 no. 1, P/148/71.

cover of complaints to the Government against one of its departments, he attacked the integrity of the judges of the Sadar Dewani Adalat. In November 1810, Reed went a step further. He printed and distributed two pamphlets in which he repeated his charges against two of the judges, Harington and Fombelle. The Government prosecuted him in the Supreme Court in Calcutta for publishing a criminal libel. He was tried in 1811 and convicted[k]. These proceedings illustrated, in the opinion of the Governor General in Council (but not of the Directors), the embarrassment caused to both Government and the Court by the Chief Judge of the latter being a member of the former; and on the occasion of the appointment of John Harington as Chief Judge on the 17th November 1811, the Governor General in Council sought to justify the new arrangement "on the acknowledged expediency of effecting a complete separation of the judicial power from the legislative and executive authorities of the state....."[6]. The Directors did not comment on the changes until 1814. They were then still unwilling to admit that the work of the Government in Bengal had much increased and they were not impressed by the difficulties which were said to arise from the Chief Judge being a member of Council, but in the circumstances they felt obliged to acquiesce[7]. Thereafter, save for a brief period when Henry Colebrooke was both a supernumerary member of the Board of Revenue and an officiating judge of the Nizamat Adalat[l], no judge was ever a member of the Government or held executive office.

Territorial Jurisdiction

In the early years of the 19th century the Court's territorial jurisdiction was considerably enlarged. The process began in 1803 when its jurisdiction was extended to the Ceded Provinces[m]. In 1804 the Courts,

---

k Letter from the Company's Attorney to the Secretary to the Government: 26 July 1811 (Board's Collection, 10, 226). On hearing the result of the prosecution the Directors commented "we....are bound to admit that the punishment of a fine of 100 rupees and 3 months' imprisonment in the common jail of Calcutta must have been such as to satisfy the ends of justice in the minds of His Majesty's Judges however inadequate it may be thought by us or by you to the scandalous nature of the offence": Judl. Letter to Bengal. 28, Oct. 1814, para. 153.

6. Letter from the Secretary to Government in the Judicial Department to the Registrar of the Sadar Court, Civ. J.C., 17 Dec. 1811, no. 2, P/148/71.

7. Judl. Letter to Bengal, 28 Oct. 1814, para. 128.

l See *infra*, Ch. VI.

m See Map 1 and Regns. 5 and 8 of 1803. The Ceded Provinces was the name given to those territories ceded to the Company by the Nawab Vizier of Oudh in 1801. They included the province of Farrukhabad to which the Nawab Vizier lacked a territorial title, and the province was formally ceded by its ruler to the Company in 1802. In 1802 the Ceded Provinces were divided into the Zillahs of Allahabad, Bareilly, Cawnpore, Etawah, Farrukhabad, Gorakhpur and Moradabad. At the same time an additional Provincial Court of Appeal and Circuit was established in Bareilly for "the division of the provinces ceded by the Nawab Vizier to the Honorable the English East India Company", a cumbersome designation shortly afterwards changed to the "division of Bareilly": Regns. 4 and 7 of 1803 and 9 of 1804.

criminal jurisdiction, and in the following year its civil jurisdiction was extended to the province of Cuttack[n] and to the Conquered Provinces[o].

As a consequence of the British occupation of the French, Dutch and Danish settlements in Bengal during the continental wars the Court's jurisdiction was extended to Chandernagar and Chinsura in 1805[p] and to Serampore in 1808[q]. On the restoration of peace the settlements were handed back to their former owners. Chinsura was subsequently ceded to the British Government under the Treaty of London in 1824 with other Danish possessions in Bengal, Bihar and Orissa. Chinsura was included in Hoogly district and the other factories and settlements were annexed to the nearest district or city. The Regulations were declared to apply to the ceded territories and the jurisdiction of the Sadar Court was re-established[8]. Provision was made for the Sadar Dewani Adalat to hear certain appeals from decisions of the European Court at Chinsura which, but for the cession, would have been determined by the Superior Court at Batavia; and in deciding such appeals the Sadar Dewani Adalat was to be governed by the laws and usages which had applied in the Chinsura Court[9].

In 1817, the Court's criminal jurisdiction was extended to the province of Kumaon[r]. In the same year, the Dehra Dun Tract was annexed to the district of Saharanpur[10] and so became subject to the Court in both civil and criminal matters, but in 1825 the Tract became part of Kumaon[11] and

n Regns. 4 of 1804 and 14 of 1805, s. 10.The province was ceded to the Company by the Rajah of Berar in 1803.

o Regns. 9 of 1804. 5, 11 and 8 of 1805, s. 10. The Conquered Provinces consisted (in 1805) of the zillahs of Aligarh, Agra, North and South Saharanpur and Bundelkhand. These zillahs (Bundelkhand excepted) had been conquered by the British and thereafter ceded to the Company by Daulat Rao Scindia; the zillah of Bundelkhand, part of the province of the same name, was ceded by the Peshwa in 1802. The zillahs of North and South Saharanpur were later divided into the districts of Saharanpur, Meerut, Muzaffarnagar and Bulandshahr, and Bundelkhand was divided into North Bundelkhand and South Bundelkhand.

p Regn. 1 of 1805. Chandernagar and Chinsura were respectively French and Dutch settlements some 20 miles above Calcutta. The former had been captured in 1757 but was restored to the French in 1816. It remained French until 1949 when it was incorporated in India as part of the Hoogly district. Chinsura was captured in 1781 and restored to the Dutch in 1783. It was again taken by the British in July 1795 and restored in 1814.

q Regn. 12 of 1808. Serampore, a Danish settlement, was about 12 miles above Calcutta. The settlement was restored to the Danes in 1814 and all Regulations relating to the administration of justice in the settlement by the Company's courts were formally rescinded; Regn. 3 of 1816, s. 2. It was acquired by the British Government by purchase in 1845 and thereafter included in the Hoogly district.

8. Regn. 18 of 1825, ss. 2, 3.

9. *Ibid.*, s. 4.

r Regn. 10 of 1817, ss. 7, 9. Kumaon was conquered in the course of the war against Nepal of 1814-16. For a vivid account of the military operations, see John Premble. *The Invasion of Nepal*, Ch. X.

10. Regn. 4 of 1817, s. 2.

11. Regn. 21 of 1825.

thus subject only to the Court's criminal jurisdiction. Then, in 1829, it ceased to be part of Kumaon, the Court's jurisdiction ended, and the administration of criminal justice became the direct responsibility of the Governor General in Council[12].

In 1829 the districts to the north and east of Delhi (and most distant from Calcutta), namely Saharanpur, Meerut, Muzaffarnagar and Bulandshahr, were placed under the administration of the British Resident at Delhi and Court's jurisdiction over these districts temporarily ceased[s].

Additions made from time to time to existing districts, usually by the annexation of adjoining territory, resulted in further small extensions of the the Court's jurisdiction[t].

On the establishment of the new Sadar Court at Allahabad on the 1st January 1832, the jurisdiction of the Calcutta Court over the provinces of Benares and the Ceded and Conquered Provinces was transferred to the new court and the powers of the Delhi Resident over the four districts of the northern Doab were rescinded.

12. Regn. 5 of 1829.

s Regn. 1 of 1829, s. 9. This arrangement was of brief duration. The four districts were in 1832 placed under the jurisdiction of the newly constituted Sadar Dewani and Nizamat Adalat at Allahabad: Regn. 6 of 1831, s. 10.

t The pergunnahs of Sonkh, Sousa and Sahar were added to the district of Agra in 1806, that of Handia to Allahabad district in 1816, the elakeh of Khundeh and the pergunnah of Chookee to Bundelkhand in 1818, and the pergunnah of Gorardhan to Agra in 1826: Regns. 12 of 1806, 18 of 1806, 2 of 1818 and 5 of 1826.

APPENDIX*

Lord Wellesley's Minute of the 12th March 1801

The Governor General in Council records the following Draft of a Regulation[a] for the more speedy and effectual Administration of Justice in the Courts of the Sadar Dewani Adalat and Nizamat Adalat.

His Excellency in Council remarks that the Governor General and Members of the Supreme Council have hitherto officiated as Judges of the Courts of Sadar Dewani Adalat and Nizamat Adalat. Under the Regulation now recorded the Judges of those Courts will in future consist of a Member of the Supreme Council and two Civil Covenanted Servants of the Company, not being Members of Council.

The Courts are to be vested with the same powers and Jurisdiction as they exercised when the Judges consisted of the Governor General and Members of the Supreme Council.

It has long been deemed indispensably necessary, for ensuring permanently the prompt and due Administration of Justice in the Supreme Civil and Criminal Courts, that the Governor General and Members of the Supreme Council should not exercise the Judicial powers belonging to the Courts of Sadar Dewani Adalat and Nizamat Adalat.

The business of the Courts of Sadar Dewani Adalat and Nizamat Adalat has continued to augment in proportion as the Laws and Regulations have been brought into more extensive operation, and notwithstanding the limitation of appeals to the Sadar Dewani Adalat by Regulations XII of 1797 and V, 1798, the number of undecided Causes in Appeal before that Court has continued to increase. The business of the Court of Nizamat Adalat has augmented in a greater degree than that of the Sadar Dewani Adalat.

The extent and importance of the Causes to be determined in these Courts furnish sufficient occupation to require from the Governor General and Members of Council the entire sacrifice of every other duty, and the Governor General and Members were therefore reduced to the alternative of resting satisfied with an incomplete nd tardy Administration of the highest Judicial functions, or of neglecting the arduous charge of the executive and legislative Government of this extensive Empire.

In the present state of the Hon'ble Company's possessions in India, it is absolutely impracticable for the Governor General and the Members of the Supreme Council (without neglecting all the other important interests of

---

* Reference p.11 above.

a Passed on the same day as Regulation 2 of 1801.

the Empire) to discharge with sufficient promptitude and regularity the Judicial duties of the Courts of Supreme Civil and Criminal Appeal in India under their former Constitution.

Other considerations demand that the Governor General and Members of the Supreme Council should be divested of their Judicial functions.

In their capacity as Judges of the Nizamat Adalat the Sentence of the Governor General and Members of the Supreme Council is final in all cases of a Criminal nature. As Judges of the Sadar Dewani Adalat the Governor General and Members of Council are final in all suits in which the property, constituting the subject of the Decrees, does not exceed in value the Sum of five thousand pound Sterling. In cases in which the property decreed exceeds that amount the decree is appealable to His Majesty in Council.

In all Criminal cases therefore the lives and the liberty of the persons of Individuals depends on the sentence of the Governor General and the Members of the Council, and the rights and property of the parties in Civil Suits (under all the delays and difficulties necessarily attendant on an Appeal to the King in Council) are nearly in an equal degree at the disposal of the same authority.

The Governor General and Members of the Council uniting the Supreme executive and legislative authorities and being subject to no control in India in the exercise of either of these Authorities, or of their Judicial functions, it is evident that under the present constitution of the Courts of Sadar Dewani Adalat and Nizamat Adalat a Government, disposed to abuse its trust, possesses in India the means of abuse without impediment, to an extent which might become extremely considerable in the present flourishing and opulent state of these Provinces. Before any such abuse could be checked by the vigilance of the Hon'ble the Court of Directors and of the controlling power residing in the Supreme executive Government of (the) British Empire the evil might attain such a degree of Magnitude as to destroy all confidence in the security of private rights and property within the Dominions of the Company, and to subvert the foundations of the prosperity and power of the British Government in India.

Whatever may be the degree of caution exercised in the selection of persons properly qualified to discharge the high trust of the Government of India, the honor and the Interests of the British Nation, and the Sacred Moral obligations which it has contracted by extending its dominions over the numerous Inhabitants of these extensive and populous Provinces, demand that every practicable precaution should be adopted to preclude the ruinous consequences of the abuse of power in the exercise of the Government, especially in the Administration of Civil and Criminal Justice.

By transferring the Judicial powers hitherto exercised immediately by

the Governor General and Members of the Supreme Council as Judges of the Superior Civil and Criminal Courts of Judicature to persons nominated by the Supreme executive Authority and acting as its representative in the Administration of the Laws, an efficacious check will be opposed to any disposition in the Government tending towards the perversion of the course of Justice.

The Governor General in Council exercising the legislative authority reserves the power of enacting under the forms prescribed by the Act of Parliament, such Laws and Regulations as may appear calculated to conduce to the Welfare of the Country. Possessing also the Supreme executive Authority it will be the duty of the Governor General in Council to maintain a vigilant Superintendence and control over the conduct of the Persons, to whom the Administration of the Laws may be committed. But the Governor General in Council will be divested of the power of interfering in the immediate Administration of the Laws, and his own acts in his executive capacity together with those of the Officers of Government in all questions relating to private rights or property will be subjected to the cognizance of the Courts of Judicature. The Governor General in Council will consequently be subjected to a great deal of check in the ordinary course of the Administration of Justice in India, and he must violate the existing Law and transgress existing forms before he can attain any means of infringing the Rights or property of Individuals. The prosperity of the British territories in Bengal and of the Inhabitants of those Territories will no longer be exposed to that danger, to which it must always have been subject from abuse or omission in the Administration of the Laws while the Supreme executive Authority reserved to itself the immediate exercise of the Judicial powers, of which it will be divested by the Regulation now recorded.

From a reference to the Regulations passed in 1793, it would appear that the establishment of the Courts of Sadar Dewani Adalat and Nizamat Adalat on the principles by which the constitution of those Courts is now regulated formed an essential part of the System of internal Government introduced into Bengal by those Regulations; altho' considerations of precaution connected with the recent establishment of that System rendered it advisable that the Governor General and the Members of the Supreme Council should exercise for a certain time the offices of the Judges of the Superior Civil and Criminal Courts.

The 12th March 1801.