CHAPTER III

CIVIL BUSINESS: THE SADAR DEWANI ADALAT

In addition to its judicial duties, the Sadar Dewani Adalat had important supervisory and administrative functions. The former are the subject of this chapter; the latter are considered in chapter V.

The Court, as reconstituted in 1801, consisted of a member of Council as Chief Judge and two covenanted servants of the Company[1]. The presence of two judges was necessary to constitute the Court; if they differed in opinion the hearing was postponed until the third judge could attend[2].

The judges were required to sit in open court "as soon as a convenient place shall have been provided for the purpose", and that did not occur until the following year. A house had been taken on rent for the use of the Court but required structural alteration and refurbishing[a], and it was only in March 1802 that the Court was able to hold its sittings in public[3].

Prior to 1801 the language of the Court had been English, but on its reconstitution the language in which its proceedings were maintained became a matter for the judges to determine[4]. The use of English rapidly declined. Writing to the Directors in September 1803 the Governor General refers to the "greatest part" of the record being in the native language[5], and by 1805 the Registrar of the Court is able to say that the proceedings were in Persian and the opinions and decrees of the judges were delivered and recorded in that language. "It is only very rarely that an English minute is placed on the record, and such a minute, when resorted to, only contains what the Persian record has already in substance"[b].

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1. Regn. 2 of 1801, s. 3.
2. *Ibid.*, s. 6.

a The new court room was provided with "3 new teak benches for the judges, 3 mahogany desks, 1 large table covered with green cloth, 1 teak platform, 4 teak long seats, 6 mahogany chairs and 18 sisso (shisham) chairs": Civ. J.C., 4 Mar 1802, no. 7, P/147/53.

3. Civ. J.C., 29 Apr. 1802, no. 3, P/147/53. The old Court sat for the last time on the 11th March 1801: *ibid.*
4. Regn. 2 of 1801, s. 16.
5. Judl. Letter to London, 30 Sep. 1803, para. 10.

b W.N. MacNaughten, in the "Advertisement" to Vol. 1 of the Sadar Dewani Adalat Reports. In evidence to the Select Committee in 1832 the Hon. W.L. Melville, who had been a Commissioner of Circuit, expressed the view that the structure of the Persian language made it "a more convenient and shorter mode of expressing evidence than the other native languages of India": Sel. Cttee. Rep. P.P.,, 1831-32, vol. XII, p. 61. Many years earlier the judge of Tipperah considered that it would be of "infinite benefit to the despatch and trial of suits in the Dewani Court, were the depositions taken

The Court was the final court of appeal in all civil matters, subject to an appeal to the King in Council in suits the value of which was £ 5000 or more[c]. It had no original jurisdiction until 1815. It was then empowered to transfer to itself for hearing any suit pending in a provincial court valued at not less than 50,000 current rupees if, from the pressure of business in the lower court, it appeared convenient to do so[6]. It was recognised at the time that this was a power that the Sadar Dewani Adalat, itself hard pressed, was unlikely to exercise; and in fact it appears never to have done so.

The Court administered the law laid down in the Regulations; if there were no specific rule it was to act according to justice, equity and good conscience[7]. It was of course bound to give effect to the provisions of any Act of Parliament which extended to the territories subject to its jurisdiction, but these were few in number.

In suits between Mohammedans or between Hindus concerning succession, inheritance, marriage, caste or other religious usage or institution, the personal law of the parties formed the general rule by which the judges were to be guided[d]. No provision was made, except in the province of Benares (Varanasi), for the case in which the parties were of different religious persuasions. In that province the courts were required in such cases to apply the law of the defendant unless the latter was neither a Mohammedan nor a Hindu, in which event the law to be applied was that of the plaintiff[e]. The Sadar Dewani Adalat appears to have regarded the Benares rule with approval. In 1825 its advice was sought by the Provincial Court of Appeal at Dacca as to the law applicable in a dispute between Mohammedans, one of whom was a Shia and the other a Sunni. The Court advised that the Benares rule could be applied by analogy provided it appeared consistent with justice and there was no special reason for adopting a different

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in Persian in all cases appealable"; Civ. J.C., 8 July 1802, no. 76, P/147/56. Land revenue records in Northern India were maintained in Persian or a highly Persianised Urdu, and the frequency with which landed property was the subject of civil litigation was also a reason for the use of Persian in the courts.

c 21 Geo III., C. 70, s. 21. £ 5,000 was declared by s. 3 of Regn. 16 of 1797 to be equivalent of 50,000 current rupees or of 43,103 sicca rupees. The latter were minted by the Government of Bengal under Regn. 35 of 1793; the former were rupees of account in which the Company's accounts were kept. Sicca rupees ceased to be legal tender on the 1st Jan. 1838.

6. Regn. 25 of 1814, s. 5.

7. Regn. 6 of 1793, s. 31.

d Regns. 4 of 1793, s. 15 and 3 of 1803, s. 16. In practice, the Hindu or Mohammedan law, in suits between Hindus or between Mohammedans, was also applied in certain other matters such as, in the case of Hindus, customs and family customs, and in the case of Mohammedans, divorce, will and debts: see W.H. Morley, *The Administration of Justice in British India* 120.

e Regn. 8 of 1795, s. 3. Since 1781 the Supreme Court at Calcutta had been required, where only one of the parties was a Mohammedan or a Hindu, to apply the law of the defendant: 21 Geo. III, c. 70. s. 17.

principle[f]. But the rule could work harshly, and in 1832 it was rescinded. In its place it was laid down, with effect throughout the territories subject to the regulations, that in any civil suit in which the parties were of different religious persuasions or where one or more of the parties was not of the Mohammedan or Hindu persuasion, the decision should be governed by the principles of justice, equity and good conscience[8]. It was stressed that this provision was not to be considered as justifying the introduction of English or any foreign law[9].

Hindu law officers, known as pundits, and Mohammedan law Officers, the kazi and muftis, were attached to the Court to assist it in deciding questions of Hindu and Mohammedan law. The law officers were officials, versed in the laws of their respective communities, whose appointment and removal rested with the Governor General in Council[10]. The practice of the Court was to put specific questions to the appropriate law officer to which the latter gave written answers[g]. The questions which arose, particularly with regard to Hindu law, were sometimes of considerable complexity and the law officer's opinion might make further questions necessary or the correctness of his opinion might be challenged by the parties. When this occurred the proceedings could be prolonged[h], but the procedure, skillfully used, provided the only means then available of ascertaining local customary law[i].

The Court had occasionally to consider and apply foreign law. Provision had been made in the Regulations for French, Dutch or Danish law as the case might be to continue to be applied in civil disputes arising in Chandernagore, Chinsura and Serampore during the period they were under British occupation[j]. The Court had also to consider appeals invol-

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f The Court's advice is contained in a letter from the Registrar quoted in *Sakina Khatun* v. *Gauri Sankar Sen*, (1833), 5 S.D.A.R. 299 at 301. The advice was presumably given in the exercise of the Court's general supervisory powers.

8. Regn. 7 of 1832, ss. 8, 9.
9. *Ibid.*, s. 9.
10. Regns. 12 of 1793, s. 2 and 8 of 1809, s. 3.

g The questions put to the law officers and their replies are frequently recorded *verbatim* in the reports.

h The case of *Ooman Dutt* v. *Kunhia Singh*, a Note on which is at the end of this Chapter, took six years to decide, and throws light on the Court's practice and procedure.

i "It is impossible to praise too highly the great care which the Court below appears to have taken in obtaining the best possible information upon the subject, a somewhat nice and intricate subject of the customs and ceremonies governing the case....I never saw a case better sifted than the present....". Lord Brougham delivering the judgment of the Privy Council in *Rany Pudmavati* v. *Baboo Doolar Sing*, 4 Moo.I.A. 259 at 291. The appeal was from a decision of the Bengal Sadar Dewani Adalat dated the 3rd December 1839.

j See p. 15; and *Peron* v. *Richemont* (1806), 1 S.D.A.R. 122, and *Durand* v. *Boilard* (1832), 5 S.D.A.R. 176, in which the Court obtained the opinion on the relevant French law from the *Procurer du Roi* at Chandernagore.

ving questions of Portuguese and Armenian law[11].

The rule of *stare decisis* was not at this time adopted by the Court although William Dorin, one of its judges, had in 1813 urged the desirability of the decisions of the Court being binding on itself and on the lower courts[12]. Even in 1850 reference to decided cases as precedents was not a general practice[13].

Procedure: The Court's procedure at the hearing of an appeal, save with regard to the examination of witnesses and the receiving of evidence, was the same as that prescribed for the zillah and city courts at the hearing of original suits[14]. Until 1815 this involved the cumbersome and time consuming practice of having to consider four pleadings—grounds of appeal, answer, reply and rejoinder—with the possibility of a supplementary set being filed if some material matter had been inadvertently omitted[k]. In 1815 the rules were changed. The respondent was no longer obliged to file an answer unless ordered to do so by the Court, and no further pleadings were ordinarily allowed[15]. As a result of this change the Court felt able in 1825 to assure the Directors that there were no unnecessary technicalities in its procedure in civil matters[l].

The part played by vakils[m] is not altogether clear. Only the parties, their witnesses and their vakils could be heard *viva voce*[16], and although there are cases in which reference is made to vakils having advanced arguments on behalf of their clients[17] it seems that it was not ordinarily the practice for them to address the court[18]. The law reports do not show whether the parties were represented or appeared in person, and references to vakils taking part in the proceedings are infrequent. Their main role at this time appears to have been limited to settling the pleadings, examining witnesses and answering questions put to them by the Court for the purpose of clari-

11. As in *Debee Dutt* v. *The Collector of Gorackpore* (1819), 2 S.D.A.R. 294 and *Avieteck Ter Stafanoos* v. *Khaja Michael Arraton* (1820), 3 S.D.A.R. 9.

12. *Selections from the Records of the East India House*, II, 20, quoted in Morley, Ch. VI, p. 331.

13. Morley, *ibid.*

14. Regn. 6 of 1793, s. 7.

k Regn. 4 of 1793, ss. 5, 6. The case of *Lall Dokul Sing* v. *Lall Rooder Purtab Sing*, Printed Cases, vol. 23, is an instance in which six pleadings were filed.

15. Regn. 26 of 1814, s. 6(3).

l Civ. J.C. (L.P.), 25 Aug. 1825, no. 3, p/150/72. As early as 1802 the Provincial Court of Appeal at Benares had suggested that the reply and rejoinder should be omitted as the plaintiff, to the detriment of the defendant, often did not state his real case until he filed his reply: Civ. J.C., 8 July 1802, no. 19, P/147/55.

m A vakil was a professional advocate, known also as a pleader.

16. Regn. 6 of 1793, s. 20.

17. *Debee Dutt* v. *Collector of Gorackpore* (1819), 2 S.D.A.R., 294 at 297; *Rajah Deedar Hoosein* v. *Ranee Zoohoorunnisa* (1822), 3 S.D.A.R. 164.

18. R. Clarke, Evidence, Sel. Ctte. Rep., P.P., 1831-32, vol. XII, 5.

fying their clients' case[19]. Vakils were expected to be selected from "men of character and education versed in the Mohammedan or Hindu law and the Regulations passed by the British Government"[n], but for some years the selection of suitably qualified persons proved difficult[20]. Vakils, as was to be expected, varied greatly in attainment but they included, particularly among those practising in the Sadar Dewani Adalat, men of great respectability and talent[21].

It seems to have been the practice for the entire proceedings to be read in Court.

> "9 May 1816. The Vakils of all the parties being present, this case, which was brought up on the 1st, 2nd, 4th and 7th current, and adjourned after reading all the papers of the Provincial Court and of this Court up to No. 74, was again proceeded upon this day, when the remaining papers of this case were read"[22].

It was not essential for both the judges constituting a bench to be present for the whole of the proceedings. An appeal could be heard by two judges on consecutive days, at the next sitting by the senior judge sitting alone, and then again by both[23]. If the Court required further evidence it usually directed that it be taken by the Provincial Court, but if the witnesses were called before the Sadar Court, their evidence would be recorded by one judge sitting singly or by the Registrar, the latter, according to judge Courtney Smith, being the usual practice[24].

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19. *Motilal Opudhiya* v. *Juggurnath Gurg*, Printed Cases, vol. 20 (as to the nature of the case and how it was to be established); *Raja Haiman Chull Sing* v. *Koomer Gunsheam Sing*, *ibid.*, vol. 22 (whether a particular fact is admitted or denied); *Maharaja Grees Chund Roy* v. *Sumboo Chund Roy*, *ibid.*, vol. 23; *Kirt Chunder Roy* v. *East India Coy.*, *ibid.*, vol. 24 (whether there was evidence on a particular point).

n Regn. 7 of 1793, s. 1 (Preamble). Lord Cornwallis had favoured the establishment of a professional bar on the ground that competent pleaders "would lay the Judges under the necessity of making themselves acquainted with the Laws and Regulations and of administering them impartially; they would put a stop to all the numerous abuses which are daily practised by the ministerial officers of the Court": Aspinall, *Cornwallis in Bengal* 90. The rules regulating the appointment and conduct of vakils were amended and consolidated by Regn. 27 of 1814. Until 1831 vakils had to be of the Mohammedan or Hindu religion. This restriction was removed by Regn. 5 of 1831, s. 30 which opened the profession to all persons native of India.

20. Para. 91 of a report by the Sadar Dewani Adalat dated 9 Mar. 1818 (Civ. J.C. (L.P.), 24 Mar. 1820, no. 57, P/150/3) quoted in P.P., 1831-32, vol. XII, 247, para, 106.

21. Holt Mackenzie, Evidence, Sel. Ctte. Rep. P.P., 1831-32, vol. XII, 16.

22. *Rajah Dundial Sing* v. *Rajah Anand Kishwar Singh;* Printed Cases, vol. 25; see also *Kirt Chunder Roy* v. *East India Coy. and an.*, *ibid*, vol. 24.

23. *Kirt Chunder Roy's* case, *supra*. The Court's decree was affirmed by the Privy Council on appeal.

24. Evidence, Rep. of the Sel. Cttee. of the House of Lords, 1830, P.P., 1830, vol. VI, at p. 59. The Registrar was authorised to record the evidence of such additional witnesses under Regn. 6 of 1793, s. 16.

At this period the decree and the judgment were not differentiated. The Court's decree contained "the particulars of the case"—a summary of the claim, the defence and the proceedings in the various courts. It frequently contained a brief statement of the evidence, sometimes a list of the witnesses and of the documentary exhibits. The reasons for which the Court arrived at its decision were frequently stated very briefly, but important questions of Hindu and Mohammedan law were usually fully discussed, especially by such judges as Henry Colebrooke and Harington. By way of contrast, the reasons given by judge Courtney Smith (in a case in which the manuscript record covered more than 500 sheets) was stated in a short sentence: "In my opinion, no grounds exist for revising the decision of the Provincial Court; it is therefore ordered that the appeal of the appellant be dismissed"[25].

Single judges: The increase in the volume of work inevitably led to the judges of the Sadar Dewani Adalat being individually vested with certain of the powers of the Court previously exercisable only by a bench. The first step was taken in 1810[26] when it was provided that if, from some unavoidable cause, two or more judges were not available to constitute a bench, a single judge could exercise the powers of the Court save that he could not, when hearing an appeal, alter or reverse the decision of the lower court. If he considered that decision to be erroneous he adjourned the hearing until one or more of the other judges could sit with him. In 1814 the continued pressure of business led to the practice which had been intended to be exceptional being made general. A single judge could now exercise most of the Court's powers notwithstanding the fact that other judges were available. There was a significant change also in the procedure for it was now no longer necessary, in those cases in which the single judge disapproved of the lower court's decree, to adjourn the hearing to enable a bench to be constituted. The single judge would record his opinion as to the order which he considered should be made, and that opinion was then placed before another judge who, sitting alone, could, if he agreed with the opinion, make a final order and cause it to be put into execution "without waiting for a sitting or both judges when circumstances may not conveniently admit of it"[27].

The Court was at first reluctant to change its practice. It considered it better that all appeals should be heard by a bench, for not only would they get the benefit of consideration by two judges but if the latter were of opinion that the lower court's judgment required alteration an order to that effect could be made at once. Pressure of work however compelled the Court to make use of the extended powers vested in single judges and it appears that by 1827 most of the judges favoured single sittings. But not all; Leycester, the Chief Judge, stressed the disadvantages of that practice.

25. *Keerut Sing* v. *Koolahul Sing*; Printed Cases, vol. 30. The judge's decision was affirmed by the Privy Council 15 years later: Privy Council Minutes, vol. 2, p. 156.

26. Regn. 13 of 1810, ss. 6-8.

27. Regn. 25 of 1814, ss. 6 and 7 read with s. 16.

"Civil Cases", he said, "are in the habit of going successively from one judge, with his detailed opinion on it, to the utmost nicety of adjusting the smallest minutiae of costs and fees, to another judge—a difference of opinion arising, it passes, with all the same minuteness of opinion, to a third, a fourth and a fifth judge so that in the end it becomes necessary to form a balance of accounts, a comparison of opinions, in order to discover of all the points at issue how many voices are in favour of this point or with that". No one, in his opinion, could have devised a system "better calculated and unavoidably calculated to throw extreme ridicule on our proceedings"[28]. Judge Dorin was of the same opinion. He considered that the existing practice threw discredit on the Court by showing "interminable differences of opinion", and he drew attention to the difficulties experienced by court officials and vakils occasioned by repeated hearings of the same appeal. If single judges must continue to hear appeals then, he urged, let their judgments be final[29]. Judge Alexander Ross was also strongly in favour of the extension of the powers of single judges. He considered that a judge sitting alone should be able, in all civil cases, to give a final judgment except on a point of law, which should be decided by the Court collectively[30]. Although this proposal found favour with the Directors[31] it was not at the time accepted by the Bengal government.

But the number of civil appeals continued to accumulate, and in 1831 the decision was taken to enlarge further the powers of single judges by declaring them competent to dispose finally of all civil appeals except those in which the decree or order had been passed after a full hearing and the final decision rested on a "mere difference of opinion as to the facts or evidence" or on a doubtful point of law[32].

28. Crim. J.C. (W.P.), 19 Jan. 1827, no. 31, P/138/37.
29. *Ibid.*, no. 32.
30. Civ. J.C. (L.P.), 21 Dec. 1826, no. 10, P/151/16, where the case for the extension of the powers of single judges is argued at length.
31. Judl. Letter to Bengal, 11 Jan. 1832, paras, 5 and 6; Sel. Cttee Rep., P.P., 1831-32, vol. XII, 209.
32. Regn. 9 of 1831, s. 2 as explained in Regn. 7 of 1832, s. 15.

NOTE*

The case of Ooman Dutt v. Kunhia Singh (1822), 3 S.D.A.R. 144

The question at issue was whether the plaintiff Ooman Dutt was, under the Hindu law, an adopted son and entitled to a half share in certain property.

The suit had been filed in December 1809. It was dismissed by the zillah judge in May 1813, and an appeal to the Provincial Court of Appeal was dismissed in January 1816. A special appeal to the Sadar Dewani Adalat was admitted in the same year, and came up for hearing before the third judge, in July 1820. He referred certain questions with regard to the validity of the form of adoption to the Court's pundits. As a result of their answers the judge in the following month put a supplementary question to the law officers and he later directed the trial court to take further evidence of local custom with regard to the adoption of a boy in the *kritima* form. In September 1821, the third judge, now sitting with the fourth judge, called upon the pundits for a further exposition of the law, and this was furnished in the following November.

At this stage of the proceedings the third and fourth judges considered it desirable to seek the assistance of the second judge "with reference to the nice point of Mithila law under consideration". The latter gave a judgment in December 1821 upholding the legality of the plaintiff's adoption. The respondent's pleader, however, appearing before the fourth judge, disputed the correctness of the pundit's opinion on which the second judge had based his decision; and the opinion of the law officers was again sought. On the 22nd January 1822 the case again came before the third judge and the pundit's answers were read to him. He differed from the view taken by the second judge and 'recommended' that the appeal be dismissed. On the next day the appeal came before the fourth judge who once again referred a further question to the pundits. They filed their answer in February, and they were of the opinion that the alleged adoption was invalid. On the 15th April 1822, six years after the appeal had been admitted, the fourth judge declared his full concurrence with the third judge as to the propriety of rejecting the claim; and the appeal was finally dismissed.

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*See p. 22