

CHAPTER VIII

THE SADAR COURT

Courts for the administration of justice in the Company's territories beyond the City limits were established in Madras in 1802.

A civil court was set up in each zillah or district¹, the presiding judge being also the local magistrate². Appeals from decisions of the zillah courts lay to provincial courts of appeal^a. Of these there were four, each of which consisted of three judges³. The appellate judges also constituted the courts of circuit and presided over all criminal trials except those for petty offences which were dealt with by the magistrates⁴.

At the apex of the system were the chief civil and criminal courts, the Sadar Adalat⁵ and Foujdari Adalat⁶. The judges of these courts were the Governor and members of the Madras Council who, when sitting as the final criminal court, were assisted, as in Bengal, by the head *kazi* and two *muftis*.

In 1806 Lord William Bentinck, then the Governor of Madras, decided that the time had come to effect a partial separation of the judicial from the other functions of government. In his opinion the judges of the chief courts should not be members of the administration, but at the same time he believed that the judicial system, which had been in existence for only four years, needed the vigilant superintendence of the Government, and that it was essential that the chief courts should take notice of all judicial irregularities. He considered therefore that, for the time being, the Governor, or in his absence the acting Governor, must continue to be president of the courts⁷. The Governor General in Council (Sir George Barlow) agreed

1. Mad. Regn. 2 of 1802.

2. Mad. Regn. 6 of 1802, s. 2.

a Originally for the divisions of Dindugul, Krishnageary, Ellore and Chicacole. The designations were subsequently changed, first to Northern Circars, Centre Division of the Carnatic, Southern Provinces and Malabar, and later to the Northern, Centre, Southern and Western.

3. Mad. Regn. 4 of 1802.

4. Mad. Regn. 7 of 1802.

5. Mad. Regn. 5 of 1802.

6. Mad. Regn. 8 of 1802.

7. M.J.C., 14 Mar. 1806, fol. 567, P/322/10.

with this proposal as a temporary measure⁸. The Sadar Adalat and Foujdari Adalat were accordingly reconstituted by Madras Regulation 4 of 1806, s. 1 of which declared that the administration of justice "shall be vested in two judges, not being members of the Government... under the occasional superintendence of the Governor as President of the Courts, until it shall appear advisable to appoint a Chief Judge also, distinct from the Government...."^b

In the following year, 1807, the Court's constitution was twice altered. In June the direct link with the Government was severed, provision being made for the Court to consist of a Chief Judge and two other judges, none of whom was to be a member of Council^c. This step had already been taken in Bengal in 1805, but, as has been seen, it found no favour with the Directors who ordered the *status quo ante* to be restored.

On receipt of these orders, which was not until July 1807, the Governor General in Council informed the Madras Government that as pressure of judicial business made strict compliance with London's directions impossible, the Court in Bengal would in future consist of a member of Council as Chief Judge and three puisne judges who would not be members of the Government; and he asked the Madras Government to fall into line save that, in his view, conditions in Madras did not justify the appointment of more than two puisne judges⁹. Bentinck dissented; members of the Government, he said, had not the time to act on the Court and, he added, "I can hardly suppose that it could have been in the intention of the Court of Directors that a tribunal vested with the ultimate decision upon all capital cases, extremely numerous, and forming the superior court of appeal in all civil suits, should be composed of less than three efficient members"¹⁰. Lord Minto, who was now the Governor General, agreed subject to the further pleasure of the Directors being known¹¹. Accordingly on 30th October 1807 a regulation was passed by the Madras Government providing that the Court should henceforth consist of a Chief Judge, being a member of Council other than the Governor or the Commander in Chief, and three judges to be selected from among the Company's covenanted servants.¹² Although provision for the appointment of three judges had been made

8. M.J.C., 25 Apr. 1806, fol. 846, P/322/10.

b The Sadar Adalat and Foujdari Adalat, as in the other Presidencies, formed a single court which exercised civil jurisdiction as the Sadar Adalat and criminal jurisdiction as the Foujdari Adalat. Mad. Regn. 3 of 1825, s. 4, refers to "the Court of Sadar and Foujdari Adalat".

c This change was effected by Mad. Regn. 1 of 1807, the preamble to which says that it was essential "that the separation of the judicial authority from the executive authority in all their respective branches...should be carried into full and complete execution both in form and practice."

9. M.J.C., 26 Aug. 1807, fol. 4308, P/322/25.

10. *Ibid.*, fol. 4312.

11. M.J.C., 27 Oct. 1807, fol. 4860, P/322/26.

12. Mad. Regn. 3 of 1807.

the Governor did not now consider that there was need at that time to appoint more than two¹³.

It was not until 1810 that the decision of the Directors became known. The Directors considered that there was no justification in Madras—even if there were in Bengal—for the appointment of three puisne judges and directed that the number must not exceed two¹⁴. The decision was accepted with reluctance by the Madras Government which expressed the hope that the restriction was temporary¹⁵.

In 1814 a Commission under Col. Thomas Munro was appointed to consider the revision of the judicial system. Proposals and drafts made or prepared by the Commission required consideration by the Sadar Court, and in May 1815, George Stratton, who had had experience as a zillah judge, was appointed a member of the Commission and an officiating judge of the Court^d. The Directors approved of this appointment as they considered that the objects of the Commission would be facilitated and the business of the Court expedited, but they made it clear that their approval did not involve agreement to a permanent addition being made to the number of the judges.¹⁶ Stratton remained a judge until July 1818, when the Commission's work was completed.

The consequent reduction in the number of puisne judges to two brought the issue to a head. Early in 1819 the Governor (Hugh Elliott) expressed his view in a Minute, subsequently sent to London, that the ends of justice could no longer be fulfilled by the Court as it was then constituted. He pointed out that the work of the Court had not in fact diminished as the Directors had anticipated but had increased and that the Chief Judge was unable on account of his duties as a member of the Government to attend the sittings of the Court. In consequence the Court must be regarded as consisting of two judges, and as no order could be made unless both were present the business of the Court necessarily ceased if either of its members became ill^e. In these circumstances he had reached the conclusion that a third puisne judge was necessary and he had appointed J.H.D. Ogilvie to this office with effect from the 1st January 1819. Perhaps a little disingenuously, he concluded by remarking that the Directors had always contemplated the Court consisting of three judges, of whom one would be of Council; and as

13. M.J.C., 27 Oct. 1807, fol. 4862, P/322/26.

14. Judl. Letter to Madras, 31 Jan. 1810, para. 10.

15. Judl. Letter from Madras, 29 Feb. 1812, paras. 11, 12.

d "No step could contribute more effectually towards hastening the progress of the labours of the Commission, than the appointment of Mr. Stratton, the 2nd Commissioner, to be one of the judges of the Sadar Adalat with which Court so great a proportion of the business to be transacted by the Commissioners is intimately connected": Governor's Minute, M.J.C., 13 May 1815, fol. 1851, P/323/16.

16. Judl. Letter to Madras, 20 Dec. 1815, para. 5.

e Archibald Scott, the senior puisne, then aged 68, was the oldest civil servant in India and his colleague, Greenway, was subject to temporary infirmities.

that member had no time to act as a judge he was really doing no more in appointing a third judge than fulfilling the Directors' instructions¹⁷. News of Ogilvie's appointment, which had in fact been made in the preceding December¹⁸, reached London before the Governor's Minute; the Director's reaction was predictable. They "altogether disapproved" of the appointment as being in contravention of their repeated orders. The appointment was to be immediately revoked, and no new appointment made without their previous sanction¹⁹.

Sir Thomas Munro had now become Governor of Madras and in January 1821 he expressed his entire agreement with the views of his predecessor²⁰. The Directors were at last satisfied that their earlier orders must be modified and in January 1824 the appointment of a third puisne judge was authorised²¹. Finally in 1825 the Governor in Council was empowered to appoint such number of additional judges to the Court as he from time to time should consider necessary²². The office of Chief Judge continued, however, to be held by a Member of Council.

The judgments of the Foujdari Adalat were final. So also, in practice, were the decrees of the Sadar Adalat except in cases in which the amount at issue was not less than 45,000 Arcot rupees²³. Until 1818 an appeal lay, in such cases, to the Governor General in Council. The existence of this right of appeal did not deprive a litigant of his inherent right to appeal to the King in Council, but there is no instance of an appeal from an appellate judgement of the Governor General in Council^f.

The vesting of the Governor General in Council with a civil appellate jurisdiction was exceptional. It had always been regarded as a temporary measure²⁴, and the exercise of the jurisdiction was a considerable burden. These considerations, together with the knowledge that his decisions were not necessarily final, led the Governor General (Lord Hastings) to decide in 1818 that it was expedient for him to relinquish his appellate powers; and in November of the same year the provisions allowing the lodging of such appeals were rescinded²⁵. As a consequence of this change in the law an

17. M.J.C., 14 Apr. 1819, fol. 1333, P/323/49.

18. M.J.C., 23 Dec. 1818, fol. 4037, P/323/45.

19. Revenue Letter to Madras, 1 Mar. 1820, para. 1.

20. M.J.C., 12 Jan. 1821, fol. 135, P/323/62.

21. Judl. Letter to Madras, 14 Jan. 1824, paras. 2-4.

22. Mad. Regn. 3 of 1825, s. 4.

23. Mad. Regn. 5 of 1802, ss. 31-36.

^f There is however an instance of an appeal being made directly to the King in Council from a judgment of the Sadar Adalat, by-passing the Governor General in Council; this is the case of *Nanchiar* decided by the Sadar Adalat on 10 Oct. 1816. The judgment was affirmed, *ex parte*, in 1828. Printed Cases, vol. 12, p. 70; P.C. Records, vol. 209, pp. 309, 326.

24. M.J.C., 7 June 1811, fol. 3137, P/322/58.

25. Mad. Regn. 8 of 1818, s. 2.

appeal now lay directly to the King in Council from all final judgments of the Sadar Adalat.

The desirability of procuring an Act of Parliament restricting such appeals (as was the case in Bengal) was brought to the notice of the Directors²⁶. The judges urged that it could not have been Parliament's intention that the inhabitants of one Presidency should have a right of appeal which those of another did not possess; and they pointed out that the Sadar Courts of Madras and Calcutta were of co-ordinate jurisdiction²⁷. Twenty-one years were however to pass before a pecuniary restriction was placed on these appeals, for it was not until the 1st January 1839 that it was provided that an appeal would lie only in cases in which the value of the matter in dispute was not less than Rs 10,000^g.

26. M.J.C., 5 Mar. 1824, No. 5, P/323/84.

27. *Ibid.*, No. 4.

^g Order in Council of the 10th April 1838, a copy of which is to be found in the Appendix to 1 Moo. I.A. The Order was one of general application in India and accordingly the limitation of £5000 existing in respect of appeals from the Presidency of Fort William ceased to be of effect.