CHAPTER IX

JUDICIAL BUSINESS: THE SADAR ADALAT AND THE FOUJDARI ADALAT

The Sadar Adalat was primarily a court of appeal, but in 1816 it was empowered to transfer to itself for trial suits in which the amount involved was not less than Rs. 45,000[1]. It is doubtful if this power was ever exercised. The Foujdari Adalat was a court of reference and revision. To it were referred the proceedings of all cases in which the sentence imposed by the trial court was one of death or life imprisonment, or cases in which the trial judge was not empowered to pass sentence[2]. The latter category included those cases in which the judge disapproved of the *futwa* of his law officer[3].

As in Bengal the Sadar Adalat was to be guided by the personal law of the parties in suits between Mohammedans or between Hindus concerning succession, inheritance, marriage, caste or other religious usage or institution, and in other cases where no specific rule was to be found in the Regulations it was to act according to justice, equity and good conscience[4].

The language of both courts was English, but the Mohammedan law officers were in most cases familiar only with Persian. Provision had therefore to be made not only for the translation into English of the proceedings of the provincial courts coming before the Sadar Adalat on appeal and of trials referred to the Foujdari Adalat[5], but also for the translation into Persian of the depositions of witnesses, if not recorded in that language, for the convenience of the law officers[a].

On the reconstitution of the Court in 1806 it was provided that no judgment or order should be valid unless signed by two judges[b]. Such also had been the rule in Bengal, but pressure of business in that Presidency had led at an early date to individual judges being vested with certain of the

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1. Mad. Regn. 15 of 1816, s. 2.
2. Mad. Regns. 7 of 1802, s. 15(1); 15 of 1803, s. 6(1).
3. *Ibid.*, s. 22; 15 of 1803, s. 6(1).
4. Mad. Regns. 3 of 1802, s. 16(1) and 5 of 1802, s. 30.
5. Mad. Regns. 5 of 1802, s. 29; 7 of 1802, s. 27.

a Mad. Regn. 7 of 1802, s. 18. This system was strongly criticised by one of the judges as a cause of unnecessary delay. The law officers (kazis and muftis) were usually recruited in Bengal and they, said the judge, "remain obstinately ignorant of the language, manners and customs of the people": H.S. Graeme, M.J.C., 11 Sep. 1827, fol. 2893, P/324/18.

b Mad. Regn. 4 of 1806, s. 7. If the bench consisted of two judges and they differed in opinion, the question at issue was postponed until a third judge could attend: *ibid.*

powers which until then had been exercisable only by the Court. It was not until 1831 that the adoption of a similar practice was considered necessary in Madras[c]. The immediate cause appears to have been the number of new regulations which the Court was called upon to prepare[6]. Regulation 8 of 1831, based upon the changes made in Bengal, provided that a single judge of the Sadar Adalat could exercise all the powers vested in two or more judges of that Court save that he could not alter or reverse an order or decision made by another judge of the Court or by a subordinate court. So also a single judge of the Foujdari Adalat was authorised to exercise the powers of the Court, but his authority was subject to important reservations. A judge sitting singly had no power to pass sentence in any case in which one or more of the prisoners was liable to the death penalty, nor could he pass sentence on non-capital trials unless he concurred with the trial judge as to the propriety of the conviction. Similarly he could pass no order in the case of other references made by a circuit judge in the course of a trial unless he agreed with the judge's opinion on the case; and he could not of course interfere with a sentence or order passed by another judge of the Foujdari Adalat[7].

There is a lack of evidence as to how the Court conducted its day to day judicial business. We know that as late as 1816 the judges doubted whether in cases in which there was a difference of opinion among themselves they were at liberty "to record on the proceedings of the Court the grounds of their respective objections", and that advice was sought as to the practice followed in the Calcutta Court[8]. There, as has been seen, the judges had always done so, and the Madras judges were so informed[9]. Presumably they adopted the Calcutta practice, although none of the reported cases makes reference to any second or dissenting opinion.

As in Bengal the decisions of the Sadar Adalat were embodied in a decree[d] which recited the course of events in the various courts and recorded the documents which had been filed and the names of the witnesses who had been examined. The reasons for the Court's decision were at times stated

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c The draft of a regulation extending the powers of a single judge, which had been prepared by the Court earlier in the year, failed to obtain the approval of the Governor General in Council who, in a terse letter to Madras, objected to certain of its provisions as "objectionable", "much too complicated a process", "wholly unnecessary and objectionable", "highly inexpedient", "still more objectionable": M.J.C., 15 July 1831, no. 1, P/324/54.

6. M.J.C., 2 Feb. 1831, nos. 5, 6, P/324/50.
7. Mad. Regn. 8 of 1831, s. 5.
8. M.J.C., 23 Dec. 1816, fol. 5613, P/323/30.
9. M.J.C., 24 Feb. 1817, fol. 346, P/323/32.

d The two volumes of reports covering the years 1805-47 are titled "Decrees in Appeal Suits determined in the Court of Sudr Udalat." Formal matters in these reports are omitted.

very briefly[e] but the practice varied and, as the reports show, the grounds of decision in cases involving questions of law were usually stated at length.

The Court was reluctant to take responsibility for construing Acts of Parliament. In 1831 a zillah court dismissed two suits on the ground that the statute 53 Geo. III, c. 155 conferred no right of suit on a British subject, the relevant provisions of the Act having reference only to the redress of grievances of natives of India against British subjects. The plaintiffs appealed to the Sadar Adalat, contending that sections 107 and 108 of the Act had been wrongly construed. The Court expressed no opinion on the points: what it did was to ask the Governor in Council to refer the question to the Advocate General of Madras for his opinion[10]. That opinion was obtained;[11] it was unfavourable to the plaintiffs and the appeals, presumably, were dismissed. A year later the Madras Government received from the Governor General in Council a copy of the opinion, given in 1830, by the Company's attorney, John Pearson, that on a true construction of the Act a British subject could institute a civil suit in the Company's courts. The Governor in Council, without protest from the Sadar Adalat, asked the latter to sent a copy of the opinion to all zillah and provincial courts "desiring them to adopt the opinion of Mr Pearson as the correct interpretation of the intention of the legislature."[12]

Vakils were entitled to practice in the Sadar Adalat but they had no right of audience in the Foujdari Adalat. Provision for their enrolment was made on the establishment of the Court in 1802[13]. The Bengal rules were followed and all appointments were made by the Court. New rules governing their appointment and regulating their fees and conduct were made in 1816[14], the corresponding Bengal regulations of 1814 being again taken as the model. The duties of a pleader appear to have been confined in practice to drawing the pleadings and answering such questions as the Court might put to him at the hearing of an appeal[f]. He did not address oral argument to the Court.[15]

In the early days of the century vakils had become the subject of much criticism which found expression in a letter from the Directors to the Madras

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e Thus in *Sree Raja Row Boochy Tummiah* v. *Sree Raja Row Venkata Niladry Row*, Printed Cases, vol. 22, the grounds are contained in one short paragraph.

10. M.J.C., 13 Jan. 1832, no. 9, P/324/58.
11. M.J.C., 3 Feb. 1832, no. 16, P/324/58.
12. M.J.C., 8 Feb. 1833, nos. 1, 2, P/324/69.
13. Mad. Regn. 10 of 1802.
14. Mad. Regn. 14 of 1816.

f Mad. Regn. 15 of 1816, s. 10(2). The reported decisions of the Court during this period do not state whether either party was represented, but the Printed Cases prepared for the use of the judicial Committee of the Privy Council show that the pleadings in the Sadar Adalat were usually prepared and signed by vakils whose names are given.

15. Evidence of R. Clarke, who was Acting Registrar to the Court in 1820: Sel. Cttee. Rep., P.P., 1831-32, vol. XII, 1.

Government in 1814[16]. The Sadar Adalat was however of opinion that the litigant public would suffer if the services of vakils were not available. The criticism, it said, came from Bengal, and in Madras the Court had no complaints against them[17].

The law administered by the Foujdari Adalat was, as in Bengal, the Mohammedan law of crime except where deviation from it was expressly authorised by the Regulations[18], and theCourt's procedure was similar to that followed by the Nizamat Adalat in Bengal. The evidence in each trial, with the *futwa* delivered in the lower court, was examined by the law officers whose opinion, together with the proceedings, was then placed before the Court which pronounced sentence[19]. The accused person was not present, and neither he nor the prosecution was represented.

The Court had the power to call at any time for the proceedings of a circuit judge or of a criminal or assistant criminal judge and to pass such orders thereon as it considered just and proper[g]. This power of revision was regarded by both Court and Government as essential for securing the due administration of justice, but wide as the power was it did not extend to the setting aside of an acquittal. This was, in effect, settled in 1825 in *Mylapilly Yerregndoo's* case which had been the subject of a sharp difference of opinion between the Government and the Court with regard to the extent of the latter's revisionary powers[h].

In 1818 two or more judges of the Court were empowered, in any referred trial, to disregard a *futwa* of acquittal by its own law officers and convict the prisoner provided they were satisfied as to the sufficiency of the evidence[i]. The Directors had viewed the conferment of this power with misgiving and considered that its exercise should be confined within the narrowest limits. They desired that the Government should not permit the power to

16. Judl. Letter to Madras, 29 April 1814, para. 21.
17. M.J.C., 28 Sep. 1816, fol. 3765, P/323/27.
18. Mad. Regns. 8 of 1802, s. 9 and 15 of 1803, s. 7(2).
19. Mad. Regn. 8 of 1802, s. 12.

g Mad. Regn. 10 of 1816, s. 25, replacing Mad. Regn. 4 of 1811, s. 17, which had empowered the Foujdari Adalat to call for the proceedings of circuit judges, and of zillah and assistant zillah magistrates. The powers of zillah magistrates were transferred to Collectors in 1816 and at the same time the zillah judges were made criminal judges. The Court was also empowered, by Regn. 6 of 1822, s. 6, to revise all sentences and orders passed by the criminal judges.

h The proceedings in *Mylapilly's* case show the extent to which the Government felt free to critize the judicial opinion of the judges and are referred to more fully in a note to this Chapter.

i Mad. Regn. 1 of 1818, s. 2(1). If the penalty for the particular offence was specified in the Regulations sentence was to be passed accordingly but if it was one for which no sentence had been provided the law officers were to be required to declare by a second *futwa* what would have been the sentence under Mohammedan law if the prisoner had been convicted by full legal evidence: *ibid.*, s. 2(2).

be used without a full report being made to it "in every case with the detailed opinions of the judges and the grounds on which they may have thought fit to exercise it."[20] The judges protested vigorously. Reports of the description desired by the Directors would not only seriously interrupt the Court's business but the grounds for their decisions could not be fully laid before the Government without a reference to the record of the trial. The proposed procedure would involve the direct interference of the Government in the administration of the criminal law, excite distrust in the minds of those subject to the Court's jurisdiction and conflict with the principle of the separation of powers[21]. The Directors' views were not, however, communicated to the Madras Government until nearly seven years after the Regulation had come into force, and their proposal does not seem to have been pursued[j].

No regulation was made empowering the judges to acquit a prisoner in a case in which the *futwa* declared him guilty. Such a measure, which had been passed in Bengal, was probably considered unnecessary in view of the powers possessed by the judges to mitigate or remit a punishment[22].

There are no reported decisions of the Foujdari Adalat earlier in date than 1826. In 1851 F.T. Arbuthnot of the Madras Civil Service published a small volume of reports covering the years 1826 to 1850, but the cases reported throw little light on the practice of the Court during the period with which we are concerned. The reluctance of the judges (in whom at this time, it must be remembered, was vested the general superintendence of the police) to discharge a prisoner against whom there was strong suspicion but insufficient evidence to justify conviction, is illustrated by two cases in which the Court required the prisoner to find security for his future good behaviour, failing which he was to be kept in confinement, in one of the cases for three years[23]. Murderers, in cases where the circumstances were particularly atrocious, were sentenced to be hanged at the place where the crime was committed and their bodies thereafter suspended in chains[24]. Sentences could be harsh. One of several persons convicted of robbery by violence was a boy aged 12. The trial judge recommended that he be pardoned, but the Court was of opinion that the evidence showed that the boy was able to distinguish right from wrong and sentenced him to seven years hard labour in chains, and on his release from jail to receive 180 stripes with the cat[25].

20. M.J.C., 10 May 1825, fol. 834, P/323/92.

21. *Ibid.*

j In 1828 the Court disposed of 36 cases (involving 75 persons) under s. 2 of Regn. 1 of 1818. 20 of these were cases in which the *futwa* of acquittal was founded on some special exception under the Mohammedan law, and 16 were cases in which such exception was not the ground of the *futwa*: M.J.C., 12 June 1829, fol. 1528, P/324/34.

22. Mad. Regns. 15 of 1803, s. 4(5); 1 of 1825, s. 6(2).

23. *Gedella Ramuda and ors.* (1829), Arbuthnot, 13; *Sevaga* (1832), *ibid.*, 42.

24. *Timma and ors.* (1832) *ibid.*, 29; *Dasi Nayakan and ors.* (1834), *ibid.*, 61.

25. *Rangan* and ors. (1833), Arbuthnot, 52.

Although severe sentences were passed on convicted persons, the number of prisoners acquitted by the Court was surprisingly high. Indeed the number of those acquitted in 1830 (314 out of 388 prisoners)[26] prompted the Directors to remark that it seemed that the law was administered by the Foujdari Adalat and the circuit courts on different principles[27].

Sentences of transportation for life were for life and in irons[28]. Transported convicts were originally sent to Prince of Wales Island (Penang), but in 1821 the Foujdari Adalat advised that they could be sent to any British settlement appointed by the Governor in Council[k]. It was not unknown for a prisoner sentenced to transportation to be allowed to take with him his wife and child[29].

Between 1825 and 1829 considerable use was made by the Court of its power to recommend to the Government the grant of a pardon to one or more "supposed accessories" of persons charged as principals with serious offences, on condition that the persons so pardoned made a full disclosure of the facts known to them[l]. The recommendation appears always to have been approved by the Governor in Council and no doubt a number of persons were punished for offences for which otherwise the evidence would have been insufficient to secure their conviction, but that special circumstances led to the extended use of this provision during these years is not clear. In 1832 the Court was empowered to sanction the offer of a conditional pardon, a reference to the Governor in Council being declared unnecessary[30].

There was usually considerable delay in the transmission of the proceedings in capital cases by the circuit to the Foujdari Adalat, a delay due in large measure to the time taken in preparing the necessary translations into English and Persian; but the Foujdari Adalat, once the record had been received, appears to have dealt with the cases expeditiously. In the years 1823 to 1826 twenty-two capital cases decided in the districts of Bellary and Cuddapa were referred to the Court. The time which elapsed between the end of the trial and the receipt of the record by the Court varied from 11 to 56 weeks, the average delay being 6 months. The time which then elapsed before the Court passed sentence on the references was, on the average, only 7 weeks[31].

26. M.J.C., 9 Sep. 1834, no. 5, P/324/90.

27. Judl. Letter to Madras, 20 Mar. 1833, para. 37.

28. M.J.C., 24 Apr. 1821, fol. 1105, P/323/64.

k The Court also suggested that the local administration's attention should be drawn to the propriety "of enforcing the sentence to which the convicts are adjudged to hard labour in irons for life, in all cases where their health and strength may admit of it": M.J.C., 24 Apr. 1821, fol. 1102, P/323/64.

29. M.J.C., 28 Oct. 1828, fol. 3085, P/324/28.

l Mad. Regn. 8 of 1802, s. 20. The earliest occasion appears to be that recorded in M.J.C., 18 Jan. 1825, fol. 44, P/323/90, the last in the consultations of 19 June 1829, fol. 1563, P/324/34.

30. Mad. Regn. 13 of 1832, s. 12.

31. M.J.C., 11 Sep. 1827, fol. 2893, P/324/18.

NOTE I

Mylapilly Yerregndoo's Case*

Mylapilly Yerregndoo was tried in 1824 on a charge of murder. The law officer in the trial court declared him to be not guilty, and as that was also the opinion of the presiding judge the latter acquitted the prisoner and directed that he be discharged[a]. Subsequently the case came to the notice of the Foujdari Adalat in the course of a routine examination of the Calendar of persons brought to trial in the circuit courts. The Court called for the record, asked the judge[b] for his reasons for concurring in the acquittal and ordered the re-arrest of Mylapilly. Thereafter the Court held Mylapilly to be guilty of murder committed in the course of a robbery and sentenced him to receive 39 lashes and to be imprisoned for life[1]. The warrant was sent to the criminal judge at Chicacole for execution but the judge, W.G. Monk[c], questioned the legality of the sentence and brought his doubts to the notice of the Foujdari Adalat. But the judges did not doubt their authority to interfere "whenever it may appear to them that such interference was required for the ends of public justice". A request by Monk to the Court to refer the matter to the Governor in Council was refused as such a course, "would involve an abandonment of the functions vested in them by law and in fact amount to participation in an irregularity which it is the proper duty of the Court to correct"[2]. Monk, who appears to have been a man of courage and determination, then addressed a letter to the Government in which he submitted that not only the sentence was illegal but that where the lawfulness of an act of the Foujadari Adalat was in question an appeal must be open to the Government as otherwise the Court could virtually legislate for itself[3].

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* See p. 93.

a M.J.C., 1 July 1825, fol. 1475, P/323/93. The judge acted under Mad. Regn. 7 of 1802, s. 14(2) of which provided, *inter alia*, that "If the law officer shall declare the prisoner to be not guilty, the judge shall pass an immediate sentence of acquittal, and order him to be discharged, unless he shall see cause to disapprove such opinion, in which case he is to refer the proceedings on the trial for the sentence of the Foujdari Adalat".

b The judge was Hugh Lord, 2nd judge of the provincial court, Northern Division. From January to September 1825 he was an acting judge of the Foujdari Adalat but he took no part in its deliberations on Mylapilly's case.

1. M.J.C., 19 July 1825, fol. 1536, P/323/93.

c William Garrow Monk joined the Company's service in 1804. He returned to England in 1827 and retired in 1829.

2. M.J.C., 1 July 1825, fol. 1462, P/323/93.

3. *Ibid.*,

The Governor in Council[d] did not consider that Monk had acted irregularly or that the Court by forwarding his letter would have abandoned any functions vested in it by law; and he called upon the Court for a full explanation.

The Court's reply was discursive. In essence it was that as the law imposed a duty on a circuit judge to satisfy himself that the *futwa* of his law officer was in accordance with Mohammedan law, and as the judge was frequently ignorant of that law, it was essential for the effectual administration of justice that the Court should be able, in a fit case, to set aside an acquittal. This the Court could do under its general supervisory authority and specifically in the exercise of its revisionary powers under s. 25 of Regulation 10 of 1816; and as the proceedings in the Foujdari Adalat were a continuation of the trial no question of double jeopardy arose[4]. The Court's view was clearly illfounded, and the Governor in Council said so. The Court's powers were entirely derived from the Regulations. As the trial judge had seen no cause to disapprove of his law officer's declaration that Mylapilly was not guilty he had no alternative but to pass an immediate sentence of acquittal and order the discharge of the prisoner. That sentence was final: the case was closed, and s. 25 of Regulation 10 could not be so construed to give the Foujdari Adalat power to re-open it. As to the Court's view that it had an inherent power to intervene the Governor in Council was "unable to perceive how an authority, so great, and of so extraordinary a nature as that in question, could with any colour of reason be regarded as inherent in the constitution of the Court., while there was nothing in the Regulations that could be referred to as giving it"[5]. He had already remitted the sentence or so much of it as remained unexecuted[6], and he now informed the Court that unless it changed its opinion on the construction of s. 25 of Regulation 10 he proposed that it be made clear by an amending Regulation that the law was in conformity with the views of the Government[7]. The judges appear to have accepted the Government's interpretation of the section for it remained unaltered.

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d The Council included Ogilvie, the Chief Judge, and Graeme who had held office both as Chief Judge and as a puisne. The Govenor was Sir Thomas Munro.

4. M.J.C., 19 July, 1825, fol. 1536, P/323/93.
5. M.J.C., 26 July 1825, fol. 1580, P/ 323/93.
6. M.J.C., 19 July 1825, fol. 1556.
7. M.J.C., 26 July 1825, fol. 1580.