

CHAPTER XI

THE JUDGES*

The first judges of the Court were the Governor and members of the Madras Council. On the reconstruction of the Court in 1806 the Governor became, *ex officio*, the Chief Judge¹, but this arrangement was intended only to be temporary and in 1807 the law was altered². The chief judge was henceforth to be a covenanted civil servant who was not a member of Council, and Lord William Bentinck was succeeded in his judicial office by James Henry Casamajor³. Casamajor had held the appointment of Sub-Treasurer and Mint Master and seems to have had no judicial experience^a. His tenure of office was brief. It lasted only four months, for in October, as we have seen^b, there was a retreat from the policy of judicial independence and it became necessary for the office of Chief Judge to be held by a member of Council⁴; and that remained the rule.

Casamajor's immediate successors as Chief Judges were Thomas Oakes⁵, James Strange⁶ and Robert Fullerton^c. Oakes appears also to have had no earlier judicial experience; Strange and Fullerton had been judges of a provincial court of appeal and circuit. Fullerton's term of office ended in 1820, and thereafter it became the usual practice to appoint as Chief Judge a member of Council who had recently served on the Court as a puisne judge.

The fact that the Chief Judge was a member of the Government meant that he had little time to attend the sittings of the Court. Successive Governors complained that a member of Council could ill be spared to act as a judge⁷. Fullerton, who was at the same time Chief judge and President of the Board of Trade, declared that he had been unable to give any material

* A list of the judges is at the end of this Chapter.

1. Mad. Regn. 4 of 1806, ss. 3, 4.

2. Mad. Regn. 1 of 1807, s.2.

3. M.J.C., 16 June 1807, fol. 3658, P/322/24.

^a He had resigned from the service in 1790 but had been permitted to return in 1804 after an absence of 14 years and 9 months: P.R.VI, 304.

^b See p. 86 above.

4. Mad. Regn. 3 of 1807, s.3.

5. M.J.C., 27 Oct. 1807, fol.4936, P/322/26.

6. M.J.C., 13 Dec. 1813, fol.6764, P/322/85.

^c M.J.C., 10 June 1814, fol. 3791, P/323/8. According to the India Register, Casamajor was Chief Judge from 1809 to 1814 and was succeeded by Robert Alexander. I have not been able to find authority for these statements.

7. Lord Wm. Bentinck, M.J.C., 26 Aug. 1807, fol. 4312, P/322/25: Sir Geo. Barlow, Judl. Letter from Madras, 29 Feb. 1812, para. 12: Hugh Elliot, M.J.C., 14 Apr. 1819, fol. 1333, para. 15, P/323/49: Sir Thos. Munro, M.J.C., 12 Jan. 1821, fol. 135, P/323/62.

assistance to the other members of the Court^d. In the case of most holders of the office of Chief Judge at this period the appointment was, in fact, nominal; their time was almost wholly occupied in the business of government. The *de facto* head of the Court was the senior puisne.

The first puisne judges of the reconstituted Court were Archibald Scott and Thomas Bower Hurdis⁸. The former had arrived in India in 1773 and for the four years preceding his appointment to the Court he had been the senior judge of the provincial court for the Northern Division. He was described by Lord William Bentinck as a man of respectable character and considerable talent. Hurdis was relatively junior in the Service (he arrived in India in 1792) and had been Registrar of the old Sadar Court since its inception. His term of office was short; he died in 1808 at the early age of 37. On being replaced as Chief judge by Thomas Oakes, Casamajor was appointed the senior puisne judge⁹, but it does not seem that he ever took his seat. He had been called provisionally into Council, his appointment as a member of Council was confirmed in December 1807 and he was reappointed under a new commission in 1810^e.

Edward Croft Greenway, then Secretary in the Judicial and Revenue Department, was appointed to fill the vacancy on the Court caused by the death of Hurdis¹⁰. The appointment was in the first instance provisional, but it was confirmed in 1811¹¹ and Greenway remained a judge until 1821 when both he and Scott were removed from office in circumstances referred to below.

In 1815 George Stratton, who was then a member of the Commission for the Revision of the Judicial System, was appointed third judge. He received no salary as a judge and was expected to divide his time between the Commission and the Court. Stratton, who had had some years' judicial experience as a zillah judge, remained a puisne judge until the end of 1818, when he became a member of the Board of Revenue. He was made a member of Council on the 10th June 1820 and on the following day he was appointed

^d M.J.C., 14 Apr. 1819, fol. 1346, P/323/49. The two volumes of reports of cases determined by the Sadar Adalat disclose few cases decided between 1807 and 1834 in which the Chief Judge was a party to the decision; and in the case of four Chief Judges (Strong, Fullerton, Harris and Oliver) there are no reported instances of their taking part in the proceedings. Ogilvie, when Chief Judge for the second time, appears at first to have sat fairly frequently. In Arbuthnot's reports of cases decided by the Foujdari Adalat between 1826 and 1834 there are only two in which a Chief Judge (Oliver) was a party.

⁸ M.J.C., 9 May 1806, fols. 1029, 1034, P/322/11.

⁹ M.J.C., 27 Oct. 1807, fols. 4862, 4936, P/322/26.

^e P.R., I 405. Charles Maxtone, a provincial court judge, was appointed to act as senior puisne while Casamajor was a member of Council. He died in 1807: M.J.C., 27 Oct. 1807, fol. 4935, P/322/26.

¹⁰ M.J.C., 14 Mar. 1809, fol. 616, P/322/38.

¹¹ M.J.C., 27 Sep. 1811, fol. 4479, P/322/61.

Chief judge¹². The transfer of Stratton to the Board of Revenue again reduced the number of puisne judges to two, and notwithstanding the views of the Directors the Governor in Council considered that the situation justified the appointment of a third judge. There had not only been an increase in the volume of the judicial business of the Court but its advisory and other work connected with the preparation of new regulations was of a nature which involved, in the Governor's words, "a very voluminous correspondence with the Government, which cannot be subjected to delay without much injury to the good of the public service"¹³. The choice fell upon John Hugh Donnell Ogilvie¹⁴. He had had very little judicial experience. After four years as Collector of Madras^f he was in 1806 appointed second judge of the provincial court for the Centre Division, but in the following year he was allowed to exchange his office for that of General Agent for the Salt Monopoly¹⁵. In 1809 he became Mint Master, an office which for ten years he held so satisfactorily that the Governor was unwilling to release him. But the Directors wanted the Mint Master's salary to be substantially reduced; a junior officer was accordingly appointed and Ogilvie was made the third judge. The appointment took effect on 1 January 1819¹⁶.

The Directors however disapproved of his appointment and directed that it be revoked^g. The Director's letter did not however reach India until June 1820, and in the meantime Ogilvie had become successively a provisional member of Council and Chief Judge¹⁷. On 11 June his place in Council and on the Court was taken by Stratton. He appears to have reverted to the office of third judge which he held to the end of the month when that appointment ceased¹⁸.

On leaving the Sadar Court Ogilvie was again appointed to the provincial court for the Centre Division. His tenure of this office (which he had held for a short time in 1806) was brief, for in October 1821 he was, at his own request, appointed Treasurer and Secretary of the Government Bank¹⁹. Shortly thereafter he became senior member of the Board of Trade and in 1824 a member of Council and, for the second time, Chief Judge²⁰.

12. M.J.C., 11 June 1820, fol. 1134, P/323/58.

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

14. *Ibid.*

f His work as Collector of Madras had been praised by Bentinck in a Minute in which he referred to "the extreme care required in the intercourse with a most populous town, where litigation and evasion have all the encouragement of English law and Attornies": Mad. Public Cons., 5 Mar. 1805, fol. 1249, P/242/74.

15. M.J.C., 13 Oct. 1807, fol. 4839, P/322/26.

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

g See p. 88.

17. M.J.C., 10 Jan. 1820, fol. 41, P/323/55.

18. M.J.C., 27 June 1820, fol. 1442, P/323/58.

19. M.J.C., 13 Oct. 1820, fol. 2477, P/323/60.

20. M.J.C., 13 July 1824, fol. 1173, P/323/86.

In June 1821 Scott and Greenway were removed from office. The immediate cause of their removal, which had been ordered by the Directors, was the part they had played in an enquiry into the conduct of a revenue official, Robert Oakes^h, the Collector of Rajahmundry. The two judges had been the subject of severe criticism in the previous year when they had failed, in the view of the Directors, to bring to the notice of the Governor in Council the incompetency and maladministration of the zillah judge of Chingleputⁱ. In Oakes' case the criticism went further, for not only did the Directors consider that the judges had failed to appreciate the nature of their supervisory duties but they had shown a want of impartiality in the discharge of their quasi-judicial functions. The facts of this case, which are of interest from more than one point of view, will be found in a Note at the end of this chapter.

The Directors did not object to Scott and Greenway being given active employment in some other capacity²¹. Scott however was not again employed and died in Madras in 1825^j. Greenway went to England but returned to India in 1826. He became a zillah judge and officiated for short periods on the provincial courts for the Centre and Southern Divisions²². He died at Mangalore in 1818, aged 48.

On 8 June 1821 Charles Harris and H.S. Graeme were appointed to fill the places on the Court vacated by Scott and Greenway²³. Harris was a man of inflexible integrity and considerable ability, but his uncertain temper and "the indisposition he seems to entertain towards the native character" were an obstacle to his advancement as an administrator²⁴. In 1806 he became General Salt Agent and in 1807 he exchanged office with John Ogilvie who was then the second judge of the provincial court for the Centre Division. Two years later he became the senior judge of that court and subsequently incurred the displeasure of the Directors who held him (and the second judge) to be "highly culpable" for the Court's failure to carry out properly its supervisory duties in the case of Coleman, the zillah judge of Chingleput. This criticism did not however constitute an impediment to his appointment to the Sadar Court in 1821²⁵. On his resignation from the service in 1824 he went to England but returned in 1827, when he was made Acting Principal Collector and Magistrate of Cuddapah. In 1829 he became a member of Council and was appointed Chief Judge²⁶, an office which he held for two

h (Henry) Robert Oakes was the son of Thomas Oakes who had been Chief Judge from 1807 to 1813.

i See p. 102.

21. Judl. Letter to Madras, 28 Apr. 1824, para. 41.

j He was buried in St George's Cemetery, his age being stated to be 72. He was however born, according to his application to join the Company, on the 10th August 1750.

22. M.J.C., 12 Dec. 1826, fol. 2474, P/324/10; 10 July 1827, fol. 2164, P/324/16.

23. M.J.C., 8 June 1821, fol. 1490, P/323/64.

24. P.R., XVII 214.

25. Judl. Letter to Madras, 7 Apr. 1819, para. 39.

26. M.J.C., 13 July 1829, fol. 1853, P/324/35.

years. Graeme, at the time of his appointment to the Court, was a member of the Board of Revenue. The Governor was reluctant to move him from that office, but he was of the view that Graeme's long experience in the provinces, his acquaintance with the people and his extensive and accurate knowledge of their institutions would make him a valuable addition to the Court²⁷. He appears however only to have held office until 1823 when he became a member of Council²⁸. In January 1824 he was appointed Chief Judge²⁹ but was succeeded by Ogilvie in July of the same year³⁰. At the end of his term of service as a member of Council Graeme became, in 1829, first judge of the provincial court for the Centre Division³¹ and subsequently Resident at Nagore.

The vacancy on the Court caused by Graeme's elevation to Council was filled by George Gowan who had officiated as a judge of the Court for the preceding year³². Gowan is a somewhat shadowy figure. He had arrived in India in 1798, and ten years later ill health compelled him to return to England where he remained for five years³³. On arriving back in India in 1814 he was appointed a zillah judge. He then became, probably in 1821, the second judge of the provincial court for the Southern Division³⁴, an office he held until his appointment to the Sadar Court. He held that office for three years when he finally returned to England.

In 1824 the appointment of a third judge was at last approved by the Directors. Francis Alexander Grant³⁵ and James Cochrane were appointed to the Court³⁶. Grant had been a provincial court judge for fifteen years, and from now on appointments to the Court were increasingly made from those of the Company's servants who had considerable judicial experience. Cochrane was a good linguist and had been a zillah judge. He had also had wide experience in the revenue administration and for the five years preceding his appointment to the Court he had been the senior member of the Board of Revenue. In proposing his appointment the Governor (Hugh Elliot) had minuted "It is desirable that there should always be among the Judges of the Sadar Adalat a knowledge not only of the Regulations and of the forms and practices of judicial proceedings but also of the native usages and institutions, the internal administration of the Country and the various revenue systems prevailing in different parts of it. Mr Cochrane... has so well availed himself of the opportunities afforded by his service... of

27. M.J.C., 8 June 1821, fol. 1490, P/323/64.

28. P.R., XVII, 16.

29. M.J.C., 27 Jan. 1824, fol. 161, P/323/84.

30. M.J.C., 13 July 1824, fol. 1173, P/326/80.

31. Mad. Public Cons., 29 Sep. 1829, no. 8, P/246/19.

32. M.J.C., 16 July 1822, fol. 1562, P/323/73; 13 June 1823, fol. 1145, P/323/80.

33. P.R., VIII, 485.

34. Indian Register, 1822 (2nd Edn.).

35. M.J.C., 27 Jan. 1824, fol. 158, P/323/84; 17 Aug. 1824, fols. 1388-90, P/323/86.

36. M.J.C., 17 Aug. 1824, fols. 1388-90, P/323/86.

acquiring the knowledge likely to be useful in the Sadar Adalat that I consider him as eminently qualified for a seat on that Court³⁷". His service as a judge was interrupted from December 1824 to September 1825 when he became a provisional member of Council on the death of the Commander in Chief. He continued to be a judge until February 1830 when he returned to England.

William Oliver, appointed in 1826³⁸, had been Persian translator to the Government and for some years Registrar of the Court. At the time of his elevation to the Sadar Court he was the senior judge of the provincial court for the Southern Division; and the Governor had said of him in 1828 "there is not on this Coast a servant of more judicial ability and experience."³⁹ In 1831 he became a member of Council and Chief Judge. He retired in 1836.

Charles May Lushington, appointed in 1829⁴⁰, had been a provincial court judge for a number of years. In 1838 he became a member of Council and Chief Judge. He resigned his office in 1843.

John Bird and William Hudleston were appointed as the second and third judges respectively in 1832⁴¹. The former's service had been almost wholly judicial. He became a member of Council and Chief Judge in 1842. Hudleston had been Persian secretary to the Government and successively deputy Registrar and Registrar of the Court. He was selected to act as second judge when John Bird went on leave to the Cape in January 1833, but the Governor (Sir Frederick Adam) found it impossible to fill the resulting vacancy of third judge as no suitable senior officer was willing to serve under Hudleston who was their junior in the service. Hudleston had therefore to be asked to resume his seat as third judge, and T.A. Oakes was appointed to officiate as second judge^k.

Grand Jury Service: For some years the judges of the Sadar Court were required to serve on the grand jury of the Madras Supreme Court, but in 1822 the Sadar Court complained of the consequent interruption of its business and the Governor in Council directed that if a judge on being summoned could not be spared he would be furnished with a certificate to that effect⁴². This arrangement appears to have worked satisfactorily until 1825 when the Supreme Court judges refused to recognise a certificate granted to George Gowan and required him to remain in court until it was clear that

37. *Ibid.*

38. M.J.C., 7 Mar. 1826, fol. 760, P/324/6.

39. P.R., XVIII, 389.

40. M.J.C., 11 Dec. 1829, fol. 4093, P/324/40. The appointment took effect on 18 Feb. 1830: M.J.C., 19 Feb. 1830, no. 2, P/324/43.

41. M.J.C., 29 June 1832, no. 1, P/324/63.

^k M.J.C., 11 Jan. 1833, no. 3, P/324/69. Stratton, on his appointment as third judge, had consented to sit below his junior, Greenway, who was second judge.

42. M.J.C., 26 Apr. 1822, fols. 1004, 1005, P/323/72.

his attendance was not needed⁴³. The Sadar Court reported the matter to the Government. They pointed out that the judges of the Sadar Dewani and Nizamat Adalat at Calcutta were exempt from jury service, and on the representation of the Advocate General the judges of the Supreme Court agreed in the following year that the Sadar Court judges (and certain other officials) should not in future be summoned to serve on grand juries⁴⁴.

43. M.J.C., 25 Oct. 1825, fol. 2349, P/324/2.

44. M.J.C.i 17 Jan. 1826, fol. 321, P/324/5.

JUDGES
of the
SADAR AND FOUJDARI ADALAT, MADRAS
1806—1834

	Season of appointment to the Service	Age on appointment as Judge	Service as Judge	Office held at time of appointment as Judge or Chief Judge
1. Lord William Bentinck	1772	55	C.J. 1806—June 1807	Governor, Fort St. George.
2. Archibald Scott	1791	35	1806—1821	Judge, Provincial Court, Northern Division.
3. Thomas Bower Hurdis	1761	61	1806—1808	Registrar of the Court.
4. James Henry Casamajor	1770	55	C.J. 1807 (June—Oct.)	Sub-Treasurer and Mint Master.
5. Thomas Oakes	1796	31	C.J. Oct. 1807—1813	Member of Council.
6. Edward Croft Greenway	1772	41	1811—1821	Secretary, Revenue and Judicial Department.
7. James Strange	1788	41	C.J. 1813—1814	Member of Council, Treasurer and Postmaster General.
8. Robert Fullerton	1772	41	C.J. 1814—1820	Member of Council and President, Board of Trade.

9. George Stratton	1793	1815—1818	Member, Commission for the Review of the Judicial System. Member of Council.
10. John Hugh Donnell Ogilvie	1788	1819—1820 C.J. 1820 (Jan.—Oct.) C.J. 1824—1829	Mint Master. Provisional Member of Council. Member of Council and senior member, Board of Revenue.
11. Charles Harris	1788	1821—1824 C.J. 1829—1831	Judge, Provincial Court, Central Division. Member of Council.
12. Henry Sullivan Graeme	1795	1821—1823 C.J. 1824 (Jan.—July)	Member, Board of Revenue. Member of Council.
13. George Gowan	1796	1823—1826	Judge, Provincial Court, Southern Division.
14. Francis Alexander Grant	1788	1824—1832	Judge, Provincial Court, Southern Division.
15. James Cochrane	1794	1824—1830	Senior member, Board of Revenue.
1. William Oliver	1800	1826—1831 C.J. 1831—1836	Judge, Provincial Court, Southern Division. Member of Council.
17. Charles May Lushington	1800	1829—1838 (subsequently C.J.)	Judge, Provincial Court, Southern Division.
18. John Bird	1801	1832—1839 (subsequently C.J.)	Judge, Provincial Court, Central Division.
19. William Hudleston	1807	1832—1840	Registrar of the Court.

NOTE

Oakes' Case and the Removal from Office of Andrew Scott and E.C. Greenway*

Complaints of misconduct and corruption had been made against Robert Oakes, the Collector of Rajahmundry, and in 1817 the Governor in Council appointed a special Commissioner, under Regulation 3 of 1809, to hold an enquiry. The basis of the charges, of which there were eight, was that Oakes had grossly neglected his duties, engaged in private trade and, in particular, had permitted his former private servant, to the latter's distinct pecuniary advantage, to interfere in the management of the District. Oakes did not attend the enquiry. The Commissioner forwarded his report, which was favourable to the accused officer, to the Sadar Adalat the judges of which were required to submit the proceedings to the Governor in Council with their opinion "whether any and what facts against the party accused appear to have been established"¹. The judges, Scott and Greenway, were of the opinion that none of the charges, except that of being engaged in private trade, had been established. This opinion was not accepted by the Governor in Council^a with whom lay the responsibility of passing such final order as appeared to him just and proper. He considered that the Court had erred in applying to the proceedings the strict technical rules appropriate to a criminal trial, and that the evidence was amply sufficient to justify a finding of guilt on six of the charges.

The Directors took a more serious view of the matter. They considered that the judges had misdirected themselves as to the nature of the proceedings and had in consequence failed to give due weight to evidence on the fundamental question, whether Oakes had done his duty as a servant of the Government. The judges, they concluded, had viewed the proceedings from a narrow legalistic standpoint, and had failed to appreciate that they were not concerned with a trial but with an investigation into the conduct of a public officer for the purpose of enabling the Government to decide whether there were grounds for his prosecution or the taking of other action against him.

The judges had taken the view that precision in the framing of the

* see p. 107.

1. Mad. Regn. 3 of 1809, s.16.

^a The Council included Robert Fullerton, the Chief Judge, who was very critical of the view taken by the Court: Mad. Revenue Cons., 30 Mar, 1819, fol, 1123, P/277/19.

charges against Oakes was of paramount importance^b. They held the charges to be, in law, badly framed, and by failing to be sufficiently specific had in more than one instance disclosed nothing which called for an answer. Much of the evidence adduced at the hearing was accordingly irrelevant.

The difference of approach of Court and Government to the evidence at the enquiry is well illustrated by a reference to the first charge. It was in these terms:

For dereliction of public duty and violation of the provisions of s. 36, Regulation 2, 1803, in permitting a certain native, Ramaswamy Naidu, not in the employ of Government and formerly a private servant of the said Collector to interfere in the public business of his office and in the management of the District under his charge.

That charge, in the judges' view, "does not contain an allegation of a single act on the part of the Collector, from which his permission of, or connivance at, the interference of Ramaswamy in the public business of the office, and in the management of the District under his charge, could be inferred. The Collector therefore had no specific charge to deny or explain". The Directors regarded the matter very differently. "Nothing", they said, "has occurred in the course of our administration for a considerable period of time which has given us greater pain than the opinion thus transcribed. A charge is preferred, imputing a breach of duty, to which are attached the most fatal consequences; a breach of duty, the general prevalence of which must totally vitiate our Government and lead to its speedy dissolution. Upon this charge a body of evidence is adduced of the most clear and satisfactory nature; yet men high in our Service, men whose opinions we wish to respect ourselves, and to hold up to the respect of others, have pronounced a decision, in this case, which we cannot account for satisfactorily, after the most anxious examination of all the documents before us". As to the lack of precision of the charges, the Directors took a practical view. If Oakes had any doubt as to the case he had to meet his doubts would have been resolved had he attended the enquiry and heard the evidence.

But the Directors were not only critical of the judges' approach to the proceedings; they had also failed to be impartial and had displayed a bias in favour of the accused officer^c. Summing up their views they said that the proceedings had been the occasion of a display of "laxity in the discharge of

(b) "The ruinous consequences which may result to an individual, whose conduct may become the subject of an investigation, although . . . such investigation wants some of the essentials of a trial, should suggest a due attention to precision in framing the charges against which the individual is called upon to defend himself. It cannot be admitted for a moment that precision is less indispensable in this case than in any other"; Progs. of Sadar Adalat of 4 Feb. 1819, in Mad. Revenue Cons., 30 Mar. 1819, fol. 1119, P/277/19.

(c) "It is impossible for us not to be struck with the great unwillingness of the Sadar Adalat to impute criminality to Mr Oakes when proved by the strongest evidence . . ." Revenue Letter to Madras, 6 Dec. 1820, para 40.

public duty, and of a most dangerous leaning towards a delinquent", which had convinced them that an interposition of their authority was "required for upholding that high sense of duty and that spirit of inflexible impartiality which are so peculiarly necessary in persons filling the important offices under our Government". They had, they said, "too complete an experience of the unfitness of Mr Scott and Mr Greenway for the due discharge of the duties with which they had been entrusted", and they directed that they be removed^d.

^d The order for the removal of Scott and Greenway was made by the Directors in December 1820. It was not until a later date that they became aware of all the facts about the case of Coleman, and writing to Madras in 1824 they said that if Scott and Greenway had not already been removed "we should have found it impossible with that further information now before us to have refrained from the adoption of that measure": *Judl. Letter to Madras*, 28 Apr. 1824, para. 36.

