

CHAPTER XII

THE SADAR COURT

In 1797 the Governor General in Council authorised the Bombay Government to constitute courts within its territories on principles similar to those on which the courts in the Bengal provinces had been established. Progress was gradual. In 1799 courts were established at Thana for the islands of Salsette and Caranja and their dependencies, Elephanta and Hog^a, and in 1800 at Surat for that city and the town of Randeir¹. These courts were subordinate to the Governor in Council who heard civil appeals "in the separate department of Sadar Adalat² and disposed of criminal matters as "the tribunal of the Governor in Council^b.

The superior court so created was reconstituted in 1821 and again in 1827. The changes made in 1821 were radical, for they brought to an end a period of twenty years during which the Governor and members of the Bombay Council were the judges of the Court^c. The legislation of 1827, although it rescinded (with immaterial exceptions) all regulations then in force and re-established the judicial system on a new foundation, left the essential features of the Court unchanged. The Court which originally sat in Bombay, was transferred to Surat in 1821 and removed back to Bombay in 1828.

The judicial duties of the Governor in Council became increasingly heavy as the Presidency grew in size and more districts were brought within the ambit of the Regulations. By 1820 the Sadar Court's jurisdiction extended over the zillahs of Ahmedabad, Broach, the East Zillah north of the Mahi River (Kaira), Surat, North Konkan, South Konkan and the district of Anjar^d.

a Bom. Regns. 3 and 5 of 1799. The civil judge also had jurisdiction over the Island of Bombay (and its dependencies, Old Woman's Colaba, Cross and Butchers Islands) in respect of claims for rents and revenues due to the Company, but not otherwise, for Bombay Island (save as regards revenue matters) was subject to the jurisdiction of the Court of the Recorder appointed by the Crown: 37 Geo. III, c. 142, s. 11; Bom. Regn. 3 of 1799, s. 2.

1. Bom. Regns. 1 and 3 of 1800.

2. Bom. Regns. 3 of 1799, s. 19; 1 of 1800, s. 19.

b Bom. Regns. 5 of 1799, s. 54; 3 of 1800, s. 54. In 1812 the name was changed to Superior Tribunal or Chief Criminal Court: Bom. Regn. 9 of 1812, ss. 1, 2.

c Lieut. Generals the Hon. James Abercrombie, Sir Miles Nightingall and Sir Charles Colville, successively Commanders-in-Chief of the Bombay Army and *ex-officio* members of Council, all sat as judges of the Court on a number of occasions: see Borrodaile's Reports, Cases nos. 9, 10, 12 (Abercrombie), 38-46, 48, (Nightingall) and 56, 58, 63 (Colville).

d See Map 3. The town and district of Anjar, which had been ceded to the British authorities in 1816, were handed back to the Dutch Government in 1822: B.J.C., 31 July 1822, fol. 4013, P/399/14.

The burden on the civil side was eased to some extent by the establishment in 1805 of a Provincial Court of Appeal at Broach^e, but the volume of criminal work continued to increase. The Governor in Council had also to deal with revenue matters, for there was no Board of Revenue in the Presidency; and in January 1820 the Governor, Mountstuart Elphinstone, recorded his opinion that it had become "utterly impossible for the Governor in Council to continue to execute the duties of the Sadar Adalat and Superior Tribunal without neglecting other important duties"³. He considered it essential that the members of the Government should be relieved of their judicial functions. There were, inevitably, financial problems. The setting up of a new Sadar Court and the retention of the existing Provincial Court would cost more than the Directors could be expected to approve; and the decision was accordingly taken to convert the Provincial Court into the new Sadar Court. The judges of the new Court would however go on circuit and hold jail deliveries in the districts; and their number would be increased from three to four. One consequence of the new scheme was to deprive civil litigants of recourse to one of the two courts of appeal to which they might formerly have had access, a feature which distinguished the new system from that in Bengal and Madras, and was later to give rise to difficulty. As the Provincial Court sat at Surat so also, it was decided, should the new Sadar Court.

Effect was given to these decisions by Regulations 5 and 7 of 1820 which came into force on the 1st January 1821. The Provincial Court of Appeal and of Circuit was abolished and the existing Sadar Adalat and Superior Tribunal were replaced by two new courts, the Sadar Adalat (the name being retained) and the Sadar Foujdari Adalat. Each of these Courts consisted of four judges appointed by the Governor in Council from the covenanted servants of the Company^f. The three judges of the former Provincial Court became the first judges of the new Courts, and Edward Ironside was appointed the fourth judge⁴.

^e Bom. Regn. 2 of 1805, s. 3. The court was also a Court of Circuit. On its civil side it heard appeals from the civil judges of the zillahs of Surat, Broach and Kaira, a further appeal in certain cases lying to the Sadar Adalat. As a Court of Circuit it replaced the Court of Session which had been established at Surat in 1800 and was now abolished. In 1810 the Court was moved to Surat. Its jurisdiction was extended over the zillah of Thana and the Court of Session, established in 1799 for the islands of Salsette and Caranja, was superseded. These changes were made by administrative order and lacked legal authority until the passing of Bom. Regn. 3 of 1812, the preamble to which refers to "A variety of judicial acts having been resolved upon by the late Government which have not yet been promulgated. . .".

3. B.J.C., 12 Jan. 1820, fol. 451, P/398/69.

^f The preamble (s.1) to Bom. Regn. 7 of 1820 refers to the Sadar Foujdari Adalat being composed of the same judges as the Sadar Adalat, but although there is no specific provision that judges of the latter court should be judges of the former that in fact was always the case.

4. B.J.C., 27 Sep., 1820, fol. 3875, P/398/75.

It had not however been noticed that Regulation 5 of 1820 omitted to make provision for the disposal of appeals pending in the old Sadar Adalat at the time of its dissolution. In February 1821 the judges drew attention to this defect, and they pointed out that it would be inappropriate for them, as judges of the new Sadar Adalat, to decide appeals from their decisions as judges of the former Court of Appeal⁵. The matter was referred to the Advocate-General who suggested that the old Sadar Adalat be revived for the purpose of hearing such appeals⁶. This course was however considered by the Government to be impracticable, and notwithstanding the obvious objections a Regulation (1 of 1821) was passed empowering the new Court to hear these appeals.

In one important matter the authority of the Court was restricted. It did not have the power in all cases finally to interpret the Regulations, as a zillah judge or magistrate who did not accept the construction put upon a Regulation by the Court could ask the latter to refer the question to the Governor in Council for decision⁷. Before 1821 a difference of opinion between a zillah judge or magistrate and the Court of Appeal or Court of Circuit as to the meaning of a Regulation was referred, if the judge or magistrate so desired, to the Sadar Adalat or to the Superior Tribunal as was appropriate⁸. A similar rule existed in the other Presidencies⁹. There was however no longer a Court of Appeal or of Circuit, and Mountstuart Elphinstone was unwilling to entrust the Sadar Court with the power of final decision on the ground that it was a party to the dispute; he feared that the Court "if entirely uncontrolled will gradually interfere with the Courts under it in a degree not contemplated by the Government, and I should wish to keep a door open for the correction of this evil if it should occur"¹⁰.

The judges protested.¹⁰ Their Court should have, they urged, the same powers as had been possessed by the court it had replaced and their decisions should be final and binding on all lower courts. The Governor conceded that the Court's decisions should ordinarily be final, but he thought that if the matter of interpretation involved the respective powers of the zillah judges and those of the Sadar Adalat "the two courts are parties and there ought to be an umpire"¹¹. There, for the time being, the matter rested.

In 1823 it was re-opened when the Committee for the Revision of the Regulations^h asked the Government for directions on the question whether

5. B.J.C., 14 Mar., 1821, fol. 621, P/398/81.

6. B.J.C., 10 Apr. 1821, fol. 995 and 2 May 1821, fol. 1290, P/398/81 and 82.

7. Bom. Regn. 8 of 1820, s.4.

8. Bom. Regn. 11 of 1812, ss.2, 3.

9. Beng. Regn. 10 of 1796; Mad. Regn. 22 of 1802.

g B.J.C., 15 Nov. 1820, fol. 4986, P/398/77. In Bengal and Madras the Sadar Court acted, in the Governor's view, as an "arbiter".

10. B.J.C., 6 June 1821, fol. 1696, P/398/83.

11. *Ibid.*, fol. 1711.

^h As to this Committee, see p. 122 below.

the resolution of doubts "arising on the construction of the law" was to be vested in the Government or the Courts¹². The Council was divided in its viewsⁱ and a compromise was reached; the Committee was instructed that the decision of the Sadar Court was to be regarded as final in all cases except where the extent of its own authority was in question¹³. The position remained unchanged until 1827 when s. 7 of Regulation 1 of that year reserved to the Governor in Council, for a period of two years, the right to declare what the regulations meant; thereafter the question of interpretation was one solely for the Sadar Court.

One of the first acts of Mountstuart Elphinstone on becoming Governor had been to secure the appointment of a Committee to review the Regulations. The Committee was appointed in August 1820¹⁴. Its task was to examine the existing law and practice and to prepare a comprehensive code, expressed in non-technical language, which would as far as possible preserve native institutions^j. The Committee made an exhaustive examination of the Regulations in force in the other Presidencies as well as in Bombay. Its labours extended over seven years and culminated in the passing on the 1st January 1827 of the twenty-six Regulations known as the Elphinstone Code^k. In this Code, which (with the exception of Regulation 18) came into force on the 1st September of the same year¹⁵, a sustained attempt was made to reform the whole of the existing regulation law and to place it on a logical and simple footing. All existing Regulations were rescinded, save for a few which were kept in force for temporary purposes¹⁶. The judicial system was reorganised, and the Sadar Court had necessarily to be reconstituted. It was replaced by a "Supreme Court or Sadar Adalat" which in the exercise of its civil jurisdiction was named the Sadar Dewani Adalat and in the exercise of its criminal jurisdiction as the Sadar Foujdari Adalat¹⁷. The Court was to consist of three or more judges appointed by the Governor in Council, and although no restriction was placed on the Governor in

12. B.J.C., 16 Apr. 1823, fol. 1254, P/399/22.

i Ibid., fols. 1299 ff. The point at issue was well put by Francis Warden, the Chief Secretary, who urged that the final decision must rest with the Court for "if it be rendered in the slightest degree either nominally or substantially subject to the orders or the control of the Government must suffer in the estimation of the public": *ibid.*

13. B.J.C., 16 April 1823, fol. 1310, P/399/22.

14. B.J.C., 9 Aug. 1820, fol. 3199, P/398/74.

j The Directors "highly approved" of the appointment of the Committee but characteristically suggested that its work could, with less public inconvenience, be done by one officer: Judl. Letter to Bombay, 22 Oct. 1823, para. 54. The suggestion was not acted on.

k The Code received the qualified approval of Sir James Fitzjames Stephen who referred to it as one "which had very considerable merits, though it would probably not have supported the test of strict professional criticism, to which indeed it was not intended to be subjected": quoted in Colebrooke's *Life of Mountstuart Elphinstone*, II, 112.

15. Bom. Regn. 28 of 1827, s.2.

16. Bom. Regn. 1 of 1827, s.1.

17. Bom. Regns. 2 of 1827, ss.1 and 13 of 1827, s. 1(2).

Council's right of selection there is no doubt that it was the intention that the judges of the new Court should be, as in the case of its predecessor, members of the service not in the Government. A change however was made in the following year when, as a measure of economy, it was decided that the office of Chief Judge should be held by a member of Council¹.

All holders of public office when the new Regulations came into force were declared to be duly elected thereunder, and accordingly the judges of the old Sadar Adalat became the first judges of the new Court¹⁸.

Territorial jurisdiction: In addition to the territories over which the reformed Court of 1821 exercised its authority the jurisdiction of the reconstituted Court of 1827 extended over the territories acquired by the Company in Deccan and Khandesh^m, which had been formed into the zillahs of Poona and Ahmednagarⁿ, and to which the Regulations, with some exceptions and modifications, were declared in force from the 1st September 1827^o. In 1830 the Court's jurisdiction was also extended to that part of the Southern Mahratta country which had been formed into the zillah of Dharwar and to which the Regulations were applied subject to the limitations for which provision was made in the case of the zillahs of Poona and Ahmednagar¹⁹.

The Deccan, Khandesh and Southern Mahratta country: For some years before they were brought within the ambit of the Regulations the territories acquired by the Company in the Deccan, Khandesh and Southern Mahratta country had been administered by the Governor in Council under a system intended to prepare the way for the eventual introduction of the general rules of British administration in force elsewhere in the Presidency. Copies of the regulations which were later to form part of the new Code were given to local officials as a guide, and a simple judicial system was established.

In 1824 a criminal judge was appointed in the Deccan, his jurisdiction extending over the administrative areas of Poona, Ahmednagar, Sholapur and Khandesh. In the following year two judges, vested with civil and criminal powers, were appointed, one judge having jurisdiction over Ahmednagar and Khandesh, the other over Poona and Sholapur. At the same time the judges of the Sadar Foujdari Adalat were appointed Commissioners of Criminal Justice for the Deccan²⁰. Two or more of the judges were to constitute a tribunal to review the proceedings of all trials in which the proposed sentence was one of death, life imprisonment or banishment for life,

¹ See below, p. 140.

18. Bom. Regn. 31 of 1827, s.2.

^m By conquest from the Peshwa (1818) and cession from Holkar (1818), Scindia (1820) and the Nizam (1822).

ⁿ The zillah of Ahmednagar included the Collectorate of Khandesh.

^o Bom. Regn. 29 of 1827. The powers of the civil courts to entertain suits against certain persons of rank, and against the Government, were restricted.

19. Bom. Regn. 7 of 1830.

20. Judl. Letter from Bombay, 31 May 1826, para. 41.

the tribunal being authorised to pass such sentences as should seem to it to be right and proper, and to issue such orders as it deemed expedient²¹. The tribunal sat at Surat, and in 1826 the Commissioners were directed that if the prisoner were a Mohammedan or a Hindu they were to satisfy themselves that the sentence was in conformity with that prescribed for the offence by the law of his religion, and for this purpose the law officers of the Sadar Foujdari Adalat were to be consulted²². As Commissioners for Civil Justice the judges exercised general control over the civil courts. They held their sittings at Surat²³.

In 1827 the judges were appointed Commissioners for Criminal and Civil Justice for the Southern Mahratta country. The judge whose circuit included the Konkan went to Dharwar where, in his capacity as Commissioner for Criminal Justice he held the Sessions. Sentences of death or life imprisonment were subject to confirmation by the Commissioners sitting at Surat who were to perform the functions of the Sadar Foujdari Adalat "as described in the Regulations"²⁴.

As Commissioners of Civil Justice the judges at Surat heard appeals from judgments of the Principal Collector in the Southern Mahratta country in civil suits tried by him. A second appeal also lay to the Commissioners from certain of his civil appellate decisions²⁵.

These arrangements of course came to an end on the extension of the Regulations to the Deccan and Khandesh in 1827 and to the Southern Mahratta country in 1830.

21. B.J.C., 9 Nov. 1825, no. 35, P/399/50.

22. B.J.C., 4 Nov. 1826, no. 49, P/399/54.

23. B.J.C., 14 June 1826, no. 6, P/399/61.

24. B.J.C., 4 Apr. 1827, no. 78, P/400/4.

25. *Ibid.*