

CHAPTER XIII

THE TRANSFER OF THE COURT TO BOMBAY AND THE ESTABLISHMENT OF THE GUJARAT PROVINCIAL COURT

On the establishment of the Court at Surat in 1821 the territory subject to its jurisdiction, except for the Southern Konkan, lay to the north of Bombay town. By 1827 that jurisdiction extended over Khandesh and the Deccan, and it would soon include Dharwar. For the inhabitants of these provinces the journey to Surat was one they were reluctant to make, and in February 1828 it was proposed in Council that the Court be transferred to Bombay for the convenience both of the litigant public and of the judges going in circuit¹. Sir John Malcolm, who had succeeded Mountstuart Elphinstone as Governor, favoured the proposal, but it evoked a strong protest from the merchants and owners of property in Surat². They submitted that the greater part of the Court's civil work consisted of appeals from decisions of the zillah judges in Gujarat^a, and that Surat, a decaying city, would suffer irreparable injury if the Court were moved^b.

The judges differed in opinion. Edward Ironside and George Anderson were in favour of the move, but it was opposed by the two senior judges, John Romer and James Sutherland³. Romer considered the move to be unnecessary, and he shared the apprehension as to Surat's future which had been voiced by its inhabitants. The Governor was impressed by the argument that the removal of the Court would injure Surat's prosperity and cause inconvenience to the inhabitants of Gujarat. He accordingly proposed that on the transfer of the Sadar Court to Bombay—as to the necessity of this he had no doubt—there should be established at Surat a Court of Appeal and of Circuit for the province of Gujarat^c. Romer, who had now become a member of Council, agreed to this proposal, and on the 26th September 1828 the Governor in Council, acting under s. 1(1) of Regulation 2 of 1827, issued a proclamation declaring that as from the 1st November 1828 the seat

1. B.J.C., 6 Feb. 1828, nos. 20, 25, P/400/15.

2. B.J.C., 26 Mar. 1828, no. 81, P/400/16.

a Of the 227 civil appeals pending on the 1st January 1827, 129 were from Surat, 14 from Kaira and Broach and 21 from Ahmedabad, but as Francis Warren pointed out the nearer the district to the appellate court the larger was likely to be the number of appeals: B.J.C., 9 July 1828, nos. 95 and 101, P/400/18.

b Surat was said to be specially convenient for Brahmins and other Hindus having business in the courts on account of the number of religious houses available for their reception: B.J.C., 26 Mar. 1828, no. 81, P/400/16.

3. B.J.C., 9 July 1828, nos. 95-98, P/400/18.

c *Ibid.*, no. 99. As the financial state of the Presidency was such that changes could be made if they did not involve additional expense, the Governor also proposed the abolition of the office of the fourth judge and of the judgeship at Kaira.

of the Court would be at Bombay⁴. On the same day a Provincial Court of Appeal and of Circuit, provision for which had been made in Regulations passed on the 20th August⁴, was constituted at Surat⁵ and James Sutherland, the senior puisne judge of the Sadar Court, was appointed Chief Judge of the new court⁶.

Two courts of appeal were thus provided for civil litigants in Gujerat, but one only for those residing elsewhere in the Presidency. In Gujerat an appeal in civil matters lay to the Provincial Court of Appeal from decisions of the zillah judges, with a further appeal to the Sadar Dewani Adalat if the Court of Appeal reversed, altered or modified the judgment of the trial court or if the amount at issue exceeded Rs. 5,000, whereas an appeal from the decision of a zillah judge outside Gujerat lay directly to the Sadar Dewani Adalat.

The Court of Circuit, although subordinate to the Sadar Foujdari Adalat, was vested with the powers of that Court⁷ and appears, for all practical purposes, to have taken its place in Gujerat.

The Provincial Court had but a short existence. The Directors had approved the move of the Sadar Court to Bombay (they had complained of not being previously consulted), but they regarded the establishment of the Provincial Court as neither necessary nor expedient. They considered that one appellate Court, the Sadar Court, strengthened if necessary by the appointment of an additional judge, was amply sufficient; and they ordered that the Provincial Court be abolished⁸. This was effected by Regulations 1 and 3 of 1830 passed on the 27th January of that year. The Provincial Court had been in existence for sixteen months.

^d B.J.C., 27 Sep. 1828, no. 27, P/400/20. The Court occupied a building known as "Claremont" in Nesbet Lane, Mazagon. The furniture ordered for the Court consisted of 3 punkas, each 15 feet long, 4 round tables and one measuring 14 feet by 6 feet, covered with green cloth, 5 large chairs with Morocco cushions, 24 chairs with arms, 8 presses, 6 tables for English writers and 6 lamps: B.J.C., 20 Aug., no. 41 and 5 Nov. 1828, no. 1, P/400/19, 21.

4. Bom. Regns. 7 and 8 of 1828.

5. B.J.C., 5 Nov. 1828, no. 29, P/400/21.

6. B.J.C., 26 Nov. 1828, no. 9, P/400/21.

7. Bom. Regn. 8 of 1828, s. 8.

8. Judl. Letter to Bombay, 29 July 1829, para. 2.