CHAPTER XIV

CIVIL BUSINESS
THE SADAR ADALAT AND THE SADAR DEWANI ADALAT

The chief civil court, known until 1827 as the Sadar Adalat and thereafter as the Sadar Dewani Adalat, was, subject to an appeal to the King in Council, the final court of appeal in all civil matters[1].

As has been said earlier[a], the Governor and members of the Bombay Council continued to be the judges of the Court until as late as 1821 when it was reconstituted. The proceedings of the old Court seem to have been somewhat informal[b], and the first act of the newly appointed judges was to arrange their sittings:

> "It was resolved, that a single judge should sit on Mondays, Tuesdays and Wednesdays, and take up the causes as they occurred in the Public Notice, as far as he could go. That on Thursdays and Saturdays two Judges should sit for the hearing of all causes referred to the full court by a single judge, and for all criminal business referred from zillah Courts to them (in their capacity of Judges of the Sadar Foujdari Adalat. That Friday being the day appointed for Mahammedan prayer, should be set apart for the hearing of Petitions and for arrears of criminal business and miscellaneous duties, and that on that day three Judges should sit"[2].

The population of the Bombay Presidency was less homogeneous than in Bengal or Madras and the Mohammedan law had acquired no pre-eminence. Until 1827 the law administered by the Court depended on the religion of the defendant if he were a Hindu or a Mohammedan, or in a case in which the defendant was Portuguese or a Parsee, on that fact. If the defendant was a Hindu or a Mohammedan the law of his religion[c] formed the rule of decision. If the defendant was Portuguese or a Parsee the Court was to be guided by the principles of equity after taking into account the customs, so far as they could be ascertained, of the community to which the defendant

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1. Bom. Regns. 5 of 1820, s.35 and 4 of 1828, s. 100.

a See p. 104 *supra.*

b "The duties (of the Sadar Adalat and the Superior Tribunal) I must say, were not conducted under that experience and with those formalities which are essential to the reputation of a Court of the highest jurisdiction". Francis Warden, in a Minute recorded in B.J.C., 6 Feb. 1828, no. 25, P/400/15.

2. Borrodaile's Reports, vol. 2, p. 1.

c "The laws of the Koran with respect of Mussulmen and those of the Shaster with respect of Hindus . . ."; Bom. Regns. 4 of 1799, s.14, 2 of 1800, s. 14.

belonged[d]. If however, the suit involved a question of succession to landed property the Court, whatever was the religion of the parties, was to take into consideration any relevant usage prevailing in the district in which the property was situated or of any particular usage of the family of the defendant. Such was the importance attached to local usage and custom that the Court was empowered to apply a customary rule in preference to a rule transcribed in the Hindu or Mohammedan law books, if it was of opinion that the former reflected the established practice and was consistent with equitable principles[3].

In 1827 the rules by which the civil courts were to be guided were restated in summary form, emphasis again being placed on local usage. Should there be no relevant usage recourse was to be had to the personal law of the defendant, and if that provided no answer the decision was to be founded on justice, equity and good conscience[e].

The Court consulted its pundits and moulvies on doubtful questions of Hindu or Mohammedan law; and in a case of doubt with regard to any other law, or to the rule or usage, of any sect or caste, the court was to resolve the difficulty by taking the evidence of expert witnesses or other well-informed persons[4].

The language of the Court was English. The decrees of the Court were also in English, but they were accompanied by a translation into the language used in the suit[5].

Vakils had a right of audience in the Sadar Adalat and Sadar Dewani Adalat. Before 1802 any person could act as a pleader, but in that year a Regulation[6] was passed which confined the profession to persons of good character and having some knowledge of Mohammedan and Hindu law and of the Regulations. Appointment was made by the Sadar Adalat and the prospective practitioner had to be of the Mohammedan, Hindu or Parsee persuasion or, in Salsette and Caranja, a native Portuguese. A code of conduct was laid down and a scale of fees prescribed. That scale was amended in 1819[7] and in 1827 the profession was thrown open to any person who was duly qualified and of exceptional character[8].

In order to expedite the despatch of business provision was made for all appeals to come in the first instance before a single judge. The judge was

d The same rule was applied in cases in which the defendant was an Armenian: *Mrs E Humrus* v. *Mr J. Humrus*, (1822), 2 Borrodaile, 496.

3. Bom. Regns. 4 of 1799, s. 14; 2 of 1800, s. 14, 5 of 1820, s. 35.

e Bom. Regn. 4 of 1827, s. 26. An unusual feature of the new Code was a provision enabling the parties in dispute to consent to the suit, or part of it, being decided by the oath of one of them, such decision being binding on the court: *ibid.*, s. 28(1).

4. Bom. Regn. 4 of 1827, s. 27.

5. Bom. Regns. 5 of 1820, s. 24(3); 3 of 1827, s. 11.

6. Bom. Regn. 14 of 1802.

7. Bom. Regn. 2 of 1819, s. 2.

8. Bom. Regn. 2 of 1827, s. 48.

empowered to pass judgment or make an order on the appeal provided that his judgment or order affirmed the decision of the lower court. If however he considered that the lower court's decision ought to be reversed or altered, or that the case was one of doubt or difficulty, his duty was to "record his sentiments on the case" and refer it for decision to a bench of two or more judges, known as the Competent Court[f]. This procedure seems to have worked well. The single judge placed on the record his view of the facts of the case, of the evidence adduced and the opinion he had formed, and if the appeal went before a bench the judges and vakils were thus aware of the matters which had given rise to doubt and much time was saved[g].

In 1827 the procedure was changed. Appeals to the Court continued to be heard in the first instance by a single judge who was to pass judgment provided his judgment confirmed the decree appealed from. If however the judge found himself unable to confirm that decree he was now required merely to "record his opinion that a full Court is necessary", and the appeal would then be heard by any three or more judges[h]. The Court construed the new rule strictly. It took the view that the rule did not allow the single judge to place on the record either his view of the facts of the case or his opinion on them, and in June 1827 the Chief Judge (Romer) complained to the Government that the new rule would result in the time of the single judge being wasted and fewer references being decided by the Court[i]. The Governor, Mountstuart Elphinstone, considered that the new procedure should be given a trial, and that the new rule did not prevent the single judge from recording his opinion before referring the case to the full Court[9].

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f Bom. Regn. 5 of 1820, s. 28(1). If the bench to which the case was referred consisted of two judges and they differed in opinion, judgment would be in accordance with the opinion of the judge who agreed with that of the judge who made the reference. If the bench consisted of four judges who were equally divided the Chief Judge had a casting vote.

g Between the 1st January 1821 and the 30th December 1826, 784 appeals came before a single judge of which 420 were referred to a bench. 289 of these were cases in which the judge considered that the decision of the lower court should be reversed or altered and 131 were cases regarded by the judge as of unusual doubt or difficulty: B.J.C., 15 Nov. 1826, no. 1, P/399/65.

h Bom. Regn. 2 of 1827, s. 10(2). The bench could include the judge making the reference. Reporting to the Government in 1824 the Court said that in the preceding five years there had been hardly any differences of opinion between the judges, but that delays occurred because up to six cases a week were referred by single judges to a Competent Court and that such a Court was at times difficult to constitute as it could not (by reason of Regn. 5 of 1820, s. 28(1)) include the judge who made the reference: B.J.C., 11 Feb. 1824, fol. 873, P/399/31. Presumably it was to avoid this difficulty that the law was changed in 1827. For all purposes other than the hearing of appeals two judges could constitute a bench: Bom. Regn. 2 of 1827, s. 9(2).

i The Regulation did not come into force until the 1st September 1827. The new rule had not appeared in the draft regulation sent to the Court for comment. It seems to have been a last minute addition made by the Committee for the Revision of the Regulations: B.J.C., 27 June 1827, no. 95, P/400/6.

9. B.J.C., 27 June 1827, no. 96, P/400/6.

The Court however adhered to the view it had previously expressed. The consequences it had foreseen occurred, and in April 1828 the vakils practising before the Court presented to it a petition complaining of the delay occasioned by the new rule. They declared that as the single judge no longer stated the grounds upon which he considered a reference necessary the appellate judges had to go through the whole of the case and in consequence the parties might have to wait a year for judgment[10]. The Court sent the petition to the Government. The judges agreed that there had been much delay, and pointed out that whereas under the old rule the Court had heard 123 appeals in six months, under the new rule it heard only 20[11]. The Government was entirely unsympathetic[j]. It considered the Court wholly to blame for the delays which had occurred. The single judge should have followed the old procedure and given his reasons fully for making a reference. That indeed, it said, was always the intent of the Government, and the Court must have been aware of it. The delay was occasioned solely by the judges "resolutely persevering in a mode of procedure which the Government they knew did not consider the Regulations to impose". It was not the law which was at fault, it was its administration. The remedy was clear, and the Governor in Council directed that the single judge must in future state his reasons for making a reference[k].

The Court accordingly reverted to its former practice, and in 1831 it was able to make to the Governor General in Council a favourable, even complacent, report on its practice in the hearing of appeals: "The mode of disposing of appeals is... excellent for ultimate justice. A single judge goes through the case—he states in writing fully—its matter—its parts of contest, and everything for elucidation. So as to bring the whole into view he states his opinion; if the appeal is one that he thinks should be confirmed, he confirms it, and the case is at an end; but if he considers that there is doubt or that the previous decision should be reversed, the appeal is referred to 3 Judges, who ultimately pass decision; this latter course is found most satisfactory to the parties... No difficulties have arisen and the judges think this way of conducting business excellent"[12]. So satisfactory did the judges consider this method of transacting business that they wanted zillah judges to make full notes—"the kind of notes made by the judges in England"—

10. B.J.C., 9 Apr. 1828, no. 60, P/400/16.

11. Ibid., no. 59.

j The Governor was now Sir John Malcolm who had taken his seat on 1 November 1827.

k The Government considered that the Court had misdrected itself on a question as to the interpretation of the Regulations. As less than two years had elapsed since the Elphinstone Code had come into force the Governor in Council had the power under Regn. 1 of 1827 to declare the meaning of the law, and it was presumably under this provision that his direction to the Court was given.

12. B.J.C., 27 Apr. 1831, no. 55, P/400/44.

in the cases which they heard, for then only could the Court be certain that the judge understood what he was doing and that points of difficulty would not be glossed over. Such notes, they considered, would be very much more satisfactory at the hearing of an appeal than a translation of the record which was kept in a native language by the sheristadar, or chief clerk, of the lower court[13].

13. *Ibid.*