THE SUPREME COURT IN CONFLICT

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To
The Memory
of
My Parents

PREFACE

In this monograph I have attempted to set forth in detail some aspects of the quarrel between the Supreme Court and the Supreme Council, an episode of absorbing interest in the history of the British in India. I had begun with the idea of writing a complete account of the quarrel in all its details, but as I read through the records I gradually realised the complexity and the arduousness of the task and have accordingly set my present aims within more modest limits. Of the several points of dispute, the most interesting and the most far-reaching in its effects was the Court's assumption of a temporary jurisdiction over the Zamindars but no adequate treatment of the question has yet been available. I venture to hope that the present work will, to a considerable extent, remove the want. The other very important question of the Court's interference with the Nizamat and the deplorable results that followed has also been treated in detail. In the Introduction the background has been clearly set, so that the reader may have no difficulty in following the narrative and the argument. I intend, however, to return to the subject

in the near future and would beg the reader to regard the present work as a preliminary clearing of the ground for a fuller and more ambitious work.

I take this opportunity of acknowledging my indebtedness to my pupil and friend, Mr. Anil Chandra Banerjee, M. A., who very kindly saw through the proofs and prepared the Index. Indeed, I doubt whether, without his kind assistance, it would at all have been possible for me to get the book through the Press in the very short space of two months. My sincerest thanks are also due to my friend, Mr. D. L. Sircar, M. A. B. L., of the Sabita Press and the Bina Library, for the kind and ready assistance that I always received at his hands.

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CHAPTER I

Introduction

Lord Clive, after the acquisition of the *Dewani*, wrote to the Court of Directors: "Your revenues, by means of this acquisition, will, as near as I can judge, not fall far short for the ensuing year of 250 lacs of *sicca* rupees, including your former possessions of Burdwan etc. Hereafter they will at least amount to 20 or 30 lacs more. Your civil and military expenses in time of peace can never exceed 60 lacs of rupees; the Nabob's allowances are already reduced to forty-two lacs, and the tribute to the King (the Great

Moghul) at 26 ; so that there will be remaining a clear gain to the Company of 122 lacs of *sicca* rupees, or £ 1,650,900 sterling." [1] It is well-known that this rosy picture about the future did not come true, though its immediate effect was to bring about a crisis in the affairs of the Company. Such ideas, together with the general credulity on the subject of Indian opulence, which seemed to be confirmed by the great fortunes with which some of the more favourably placed servants of the Company returned to England, produced exaggerated conceptions about the financial resources of the Company. There was an unprecedented demand for the India stock which rose, in 1766, as high as 263 per cent., and the Court of Proprietors raised the dividend

1 Quoted by R. C. Dutt in *Economic History of India under Early British Rule*, p. 37. The callous injustice inherent in this view of regarding Bengal and its inhabitants as a mere item in the profit and loss account of the Company, is apparent, but we are not concerned with that aspect of the question here.

from six to ten per cent., inspite of the protest of the Directors, who knew the real condition of the Company much better than popular opinion supposed it to be.

Again in 1767 the Court of Proprietors further raised the dividend to 12½ per cent., but, in the meanwhile, the affairs of the Company had been assuming the character of a major national issue and ministerial interference was loudly demanded. "Financial distress consequent on the Seven Years' War raised the question of taxing either the American Colonies or the India Company, and theories concerning the right of the Crown to the territories acquired by subjects began to circulate." The Ministry took instant action. The Court of Proprietors had raised the dividend to 12½ per cent. on the 6th of May and on the 24th of June an Act was passed, "which directed that, after the 24th of June, 1767, dividends should be voted by ballot only at General Courts expressly assembled for that purpose ; 10 per cent. was set as the maximum dividend ;

and it was ordered that no dividend should be declared before the next session of Parliament."

But the controversy went on as before. "Chatham held that the time had come for Parliament to inquire by what right the Company administered its territorial revenues. He considered that it had no right to its new position of a virtually sovereign power, that the sovereignty of the Crown should be asserted, and that in return for the privileges which it enjoyed it should contribute a portion of its revenues to the national treasury." Speaking of the Act of 1767 Chatham opined that "Townshend had marred the business." [1] On the other hand, others, like Burke and Rockingham, held that any legislative interference with the Company with regard to its territorial revenues would be a clear infringement of the rights of property and a violation of the Company's

1 Hunt and Poole, *Political History of England*, Vol X, pp. 79,80.

charter. In 1769 something like a compromise was effected. An Act was passed, which enacted that "in consideration of the continued enjoyment of the Indian revenues for the next five years, the Company was to pay into the Exchequer £ 400,000 annually." As Firminger says, "the Acts of 1767 and 1769, while silent on the all-important subject of sovereignty, established the principle of the right of the nation to control and participate in the affairs of the Company," [1]

The Directors attributed all their difficulties to the rapacity of their servants in India and 'bewailed the lack of adequate powers to punish the delinquents.' However, they now busily set themselves to put their affairs in order and in 1769 Supervisors were appointed in the various districts of Bengal to superintend the native functionaries both in the collection of revenues and in the administration of justice. These Supervisors

1 Firminger, *Introduction to the Fifth Report*, p. ccliv.

were further entrusted with the task of collecting information with regard to the amount of the revenue, the capacity of the lands, cesses or arbitrary taxes, the mode of collecting them, the regulations for commerce, and the existing judicial administration. Further, a special Commission, composed of Vansittart, Luke Scrafton and Colonel Forde, was sent out "to superintend all the presidencies and settlements, with full power to correct all abuses, and to dismiss or suspend such servants as might appear to have been concerned in such proceedings." But unfortunately, the *Aurora* in which they sailed, was lost in the sea after it had left the Cape. These, no doubt, were steps in the right direction but the state of disorder into which the affairs of the Company had fallen, could not be remedied by simply punishing their dishonest servants. The root of the matter went far deeper. Explaining the reasons of the distressed state of Bengal, Verelst, in a letter to the Court of Directors, refers to the continual irruptions of the Marathas

during the days of Ali Verdi Khan, the avarice of the ministers of Sirajaddowla, the necessities of Mir Jafar and the exactions of Mir Kashim and then goes on to write : "If, to these, we add, first, the immense amount in specie and jewels to the value of between three and five crores of rupees, secreted or carried off by Cossim, after his several defeats had obliged him to relinquish all hopes of a reinstatement ; 2ndly, The royal tribute of twenty-six lacks, and the expence of about twenty lacks for a brigade, both paid annually out of the provinces, and consequently out of the sphere of our immediate circulation ; 3rdly, The annual amount of our own, and the other nations' investments, for which no value is received into the country : 4thly, The large exports of bullion to China, and the different presidencies during the three last years : And lastly, the unavoidable misfortune and capital drain, the immense sums paid into the cash of foreign nations, for bills on their respective Companies : I say, the aggregate

of these several exports must appear inevitably and immediately ruinous to the most flourishing state, much less be deemed tolerable to a declining and exhausted country."[1] The great famine furnished the coping stone and brought the Company to the brink of disaster.

It is no wonder, therefore, that the Directors soon found that they were unable to fulfil their obligation to the Treasury of paying £ 400,000 per annum and were even driven to the necessity of asking for an abatement from the Government. The outcry that was raised was tremendous. "Stocks fell ; panic seized the investors ; the Directors, it was said, cried out for relief, and yet their servants were returning daily with accumulated fortunes to flaunt

1 Forrest, *The Life of Lord Clive*, Vol II, pp. 371, 372. Verelst is naturally silent about the ill-gotten gains of the Company's servants. His reference to Mir Jafar's "necessities" is amusing. He had to pay 1 crore to the Company, 77 lacs to the inhabitants of Calcutta, 50 to the European, 20 to the native, and 7 to the Armenian. Besides, he had to pay another huge amount to the Company's servants as private gifts. The successive revolutions also cost huge amounts as gifts to highly placed officers in the Company's service.

their wealth in the eyes of an indignant aristocracy. A clamour arose for the regulation of India affairs by Parliament." Horace Walpole has left us a picture of the public mind :

"We have another scene coming to light, of a black dye indeed. The groans of India have mounted to heaven, where the ***heaven-born*** General Lord Clive will certainly be disavowed. Oh, my dear Sir, we have outdone the Spaniards in Peru ! They were at least butchers on a religious principle, however diabolical their zeal. We have murdered, deposed, plundered, usurped—nay, what think you of the famine in Bengal, in which three millions perished, being caused by a monopoly of the provision by the servants of the East India Company ? All this is come out, is coming out—unless the gold that inspired these horrors can quash them. Voltaire says, learning, arts, and philosophy have softened the manners of mankind : when tigers can read they may possibly grow tame—but man !"[1]

1 Quoted in Forrest, *The Life of Lord Clive*, Vol. II, p. 383.

The Directors clearly saw that a Parliamentary enquiry into the affairs of the Company was becoming, more or less, inevitable, and in order to forestall it, Sullivan, the Deputy Chairman of the Court of Directors, who was also a member of the House of Commons, brought forward a motion, on the 30th of March, 1772, to bring in a Bill "For the better regulation of the affairs of the East India Company, and of their servants in India, and for the due administration of justice in Bengal". The arguments followed the familiar lines of the malpractices committed by the Company's servants and the inadequacy of the powers to punish them. In the debate that followed the servants of the Company were roundly attacked, particularly Lord Clive who made a vigorous reply, which Chatham characterised as "one of the most finished pieces of eloquence he had ever heard in the House of Commons."[1] But Sullivan's Bill could not be proceeded with, because, on the 13th

1 *Forrest, op. cit.*, p. 386.

of April, Colonel Burgoyne moved and ultimately carried a motion for the appointment of a Select Committee "to inquire into the nature, state and condition of the East India Company, and of the British affairs in the East Indies."

It appears, however, that in this Committee the enemies of Clive had a preponderant voice and very soon the idea that it was "a constitutional body created for the purpose of obtaining a knowledge of Indian affairs" was practically dropped and it busied itself at levelling enquiries at the wealth of individuals, particularly of Lord Clive. Though a member of the Committee, Clive was examined and cross-examined at length in course of which he made that well-known utterance wherein he declared that he was amazed at his own moderation.[1] The

1 Lord Clive said: "Am I not rather deserving of praise for the moderation which marked my proceedings? Consider the situation in which the victory at Plassey had placed me. A great prince was dependent on my pleasure; an opulent city lay at my mercy; its richest bankers bid

Report of the Committee "inflamed the heat of popular passion against the wealthy Nawabs, but it also excited a general indignation at the maladministration of the Company."

The Directors attempted to meet the situation by sending out a fresh Commission of Supervisors "with full powers for the regulation of their affairs" but the Ministry had made up its mind and was not to be so easily baulked. "George III, bent on resuscitating the Tory party, was looking for new fields of patronage and India affairs now assumed a new significance." As early as February, 1768, Clive wrote to Verelst: "Let me tell you in secret that I have the King's command to lay before him my ideas of the Company's affairs both at home and abroad, with a promise of his countenance and protection in everything that I might

against each other for my smiles; I walked through vaults which were thrown open to me alone, piled on either hand with gold and jewels! Mr. Chairman, at this moment I stand astonished at my own moderation." Forrest, *op. cit.*, Vol. II, p. 394.

attempt for the good of the nation and the Company."[1] Towards the end of the year 1771, Lord North had had several meetings with Lord Clive and the idea gained ground that he was becoming the chief adviser of the Ministry regarding the East Indian affairs. This was the main reason which had led Sullivan and his party to engineer the attacks against Clive in the House, as well as in the Select Committee. But these do not seem to have made much difference in the attitude of North towards Clive. It appears that through the influence of North Clive was appointed Lieutenant of the county of Salop. He had another discussion with Lord North regarding the affairs of the Company and submitted to the Minister on the 7th of November, 1772, a Memorandum on the government of India in which he "suggested sundry important alterations in the constitution, among them being a transfer of the territorial sovereignty to the Crown."[2]

1 Forrest, *op. cit.*, Vol II, p. 364.

2 *Ibid.*, p. 397.

It will thus be seen that the Ministry had been trying to get at materials for the formulation of an independent policy with regard to the East Indian affairs and consequently, when Parliament reassembled on the 26th of November, the King's Speech referred to "the difficulties in which the Company appears to be involved," and Lord North made and carried a motion for the appointment of a Secret Committee to take into consideration the affairs of the Company. The Committee was also directed to consider the proposal of the Directors for sending a special Commission of Supervisors to India. On the 7th of December the Committee submitted a report in which it suggested that a Bill should be passed restraining the Directors from sending the Commission of Supervisors to India. This proposal and the Bill that was subsequently brought and passed in order to give effect to it, occasioned the liveliest of debates, in which the Whigs, alarmed at the growing power of the Crown, took a most prominent part. Burke charac-

terised the Bill as a direct invasion of the Company's charter. He said : "It is a Bill to suspend the law of the land ; it is neither more nor less ; and we are, after distressing the Company, about to rob them of their charter, and overthrow their constitution." The Company's supporters also spoke of the grant from the Great Mughal and the treaties with the successive Nawabs, but all to no purpose. The Bill was passed into law on the 18th of December, 1772.

In the meanwhile the financial difficulties of the Company had gone on increasing and the Directors were soon driven to the necessity of applying to the Government for a loan of £ 1, 500,000 at an interest of 4 per cent. Thereupon, on April 5,1773, Lord North moved a resolution agreeing to grant the loan under certain conditions, the most important of which was "that the Territorial Acquisitions and Revenues lately obtained in India should, under proper restrictions and regulations, remain in the possession of the Company, during a term not exceeding

six years." As Forrest says, "thus, for the first time, a claim was distinctly asserted by the Government to the territorial acquisitions of the Company." Inspite of the vehement opposition of Burke the resolution was agreed to without a division. On May 3, before a Committee of the whole House Lord North moved : "That it was the opinion of this Committee, that the House be moved, that leave be given to bring in a Bill, for establishing certain regulations, for the better management of the affairs of the East India Company as well in India as in Europe." This being agreed to, on May 18, Lord North brought forward his Bill which was duly placed on the Statute Book and has since been known as the Regulating Act.

It will thus be seen that the authors of the Regulating Act had been called upon to meet, and to provide remedial measures for a very complex and difficult situation. The constitution originally designed for a purely mercantile Company was breaking down under the stress of new and unforeseen

responsibilities. The acquisition of territorial revenues had completely changed the character of the Company and brought in the question of sovereignty ; on the other hand, it had opened to the Company's servants in India wide opportunities of personal profit and aggrandisement, which were being utilised in the most unscrupulous and nefarious ways. For a decade the once opulent province of Bengal and her inhabitants had practically been left to the unrestrained rapacity of dishonest adventurers, and the consequences were disastrous both for the people and the Company itself. There can be no question therefore that the situation demanded drastic remedies.

Among the points that the Regulating Act sought to settle three may be particularly distinguished : first, the right of the Company to the territorial revenues, or in other words, the fundamental question of sovereignty ; secondly, the provision for the Company of a constitution both in England and India more in consonance with its

changed character and wider responsibilities; and thirdly, the creation of some effective checks which would put an end, once for all, to the malpractices of the Company's servants.. As we have seen, a claim on the territorial revenues of the Company had been distinctly asserted by the resolution passed on April 5, 1773, but the Regulating Act did not take the matter much further. Sir James Stephen says: "The policy of Parliament was to assert the rights of the King of England and to establish in India institutions by which those rights might be maintained." But "their unwillingness to deal roughly with the theory of the East India Company" that the territorial revenues were held under a grant from the Great Mughal, was responsible for "the characteristically vague and imperfect way" in which the policy was carried out. In Sir James Stephen's view [1] this displayed itself in the obscurity of the language of the Act about British subjects

1 Stephen, *The Story of Nuncomar and the Impeachment of Sir Elijah Impey*, Vol. I, p. 14; Vol. II, p. 129.

and also with regard to the relation between the Council and the Court.

But the right of the Government had already been asserted and the object of the Regulating Act might not at all have been what Sir James Stephen thinks it to be. As Firminger points out, "the policy of the Regulating Act was to improve the existing administration carried on by the Company in Bengal, and not to provide a new Bengal Government."[1] With that object in view, the Court of Proprietors, which had recently been guilty of much violence and indiscretion, was made more representative of persons with larger stakes in the interest of the Company, and the Court of Directors was made more stable and more independent of the Court of Proprietors. And in Bengal the Act sought to achieve "a change in the *personnel* of the Governor's Council by which the doings of the Company's servants would henceforth be controlled by men who would have no personal interest to serve by cloaking misgovernment in the districts, and

1 Firminger, *Introduction to the Fifth Report*, p. cclviii.

who presumably would be free from the class prejudices of the Company's servants." The authors of the Regulating Act had perhaps hoped that the three new Councillors, Clavering, Monson and Francis, free as they were from all prepossessions regarding Indian affairs, would introduce a fresh and healthy outlook, which, combined with the experience of Hastings and Barwell, would so shape the Council's policy as would befit the exigencies of the hour. And Section 7 of the Act provided: "That the whole civil and military government of the said Presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues of the Kingdoms of Bengal, Behar, and Orissa, shall, during such time as the territorial acquisitions shall remain in the possession of the Company, be vested in the said Governor-General and Council of the presidency of Fort William in Bengal, in like manner to all intents and purposes whatever as the same now are or at any time heretofore might have been exercised by the

President and Council or Select Committee in the said Kingdoms." Herein again the proposition, that the territorial revenues were to continue in the hands of the Company only so long as Parliament so desired, is reasserted, but as the Ministry had decided that these were to remain with the Company for the present, the main question was not the assertion of the rights of the Crown but the reform of the Company's government better to suit the new conditions.

Lastly, we come to the question of the malpractices of the Company's servants. The acceptance of presents, pecuniary or otherwise, as also private trade, is definitely prohibited by Sections 23 and 24. Section 26 further lays down: "That every such present or reward, and all such dealing by way of commerce, shall be deemed and construed to have been received, and done, for the sole use of the Company; and that the Company may sue for the recovery of the full value of such present or gift, or the profits of such trade, together with

interest at the rate of £ 5 *per centum* per annum." Section 27 more specifically deals with the question of inland private trade which is entirely forbidden, so far as the collectors, supervisors, or any other of His Majesty's subjects, employed in the administration of justice, or their agents or servants, are concerned. But the most important of all was the institution of the Supreme Court which was to have jurisdiction over all British subjects resident in the three provinces of Bengal, Behar and Orissa, and all persons directly or indirectly in the service of the Company, and which was not to be "a Court composed of Company's servants, removable by Company's servants," but "a Court of King's Judges and professional men of the law."

It cannot be said that the measures discussed above were inadequate to meet the situation for which they were devised, but their effects were marred, as has been said by all competent authorities, by the defects of drafting both of the Act and the Charter.

These difficulties also, we think, might have been, to a great extent, minimised by a spirit of reasonable restraint and honourable compromise, but the *personnel* chosen to represent the Council, as well as the Court, made that, more or less, impossible, and a scene of tension and bitterness ensued, which has hardly any parallel in the whole history of the British in India. The aftermath of the Regulating Act manifested itself in three distinct conflicts: the conflict within the Council; the conflict between the Governor-General and Council and the other Presidencies; and the conflict between the Court and the Council. In will be our endeavour, in this monograph, to illustrate some aspects of this last quarrel which arose primarily on the question of jurisdiction.

The Supreme Court of Judicature was established ostensibly because the Charter of George II "does not sufficiently provide for the due administration of justice, in such manner as the state and condition of the Company's Presidency of Fort William

in Bengal, so long as the said Company shall remain in the possession of the territorial acquisitions,···do and must require." [1] The main reason for the establishment of the Supreme Court was, therefore, the change effected in its character by the acquisition of territorial revenues on the part of the Company. This is important to remember, because the extent of the Court's right of interference with regard to the revenue administration of the Company became the principal bone of contention between the Court and the Council.

The Court was to be a Court of Record and was to consist of a Chief Justice and three puisne Judges, who were all to be paid fixed salaries. The Chief Justice was to enjoy a rank and precedence, second only to the Governor-General. The Chief Justice and the Judges were also "appointed" to be Justices of the Peace, and Coroners in Bengal, Behar and Orissa, and to have such authority as the Justices of the King's Bench in

1 Charter, Sec. I.

England. All writs issued by the Court were to be in the King's name.

The Supreme Court of Judicature was also to be a Court of Oyer and Terminer and Gaol Delivery "in and for the town of Calcutta and the Factory of Fort William in Bengal aforesaid, and the limits thereof, and the Factories subordinate thereto." The Sheriff, who was to be appointed annually by the Governor-General and Council from a panel of three nominated by the Supreme Court, was authorised to summon the Grand and Petit Juries, and the Court was empowered to punish the non-attendance of jurors by fine or imprisonment or both. The Supreme Court was further to be a Court of Equity and a Court of Admiralty and was also to exercise ecclesiastical jurisdiction.

As regards the jurisdiction of the Court Section 14 of the Regulating Act states :

"Provided that the jurisdiction shall extend to all British subjects who shall reside in the kingdoms or provinces of Bengal,

Behar and Orissa : and the Supreme Court of Judicature shall have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes, misdemeanours, or oppressions ; and also to entertain suits or actions against any of His Majesty's subjects in Bengal, Behar and Orissa, and any suit, action, or complaint, against any person employed by, or directly or indirectly in the service of the Company, or any of His Majesty's subjects."

The Charter further provides : "That the Supreme Court of Judicature is hereby authorised to hear, examine, try and determine, all such causes, actions, and suits as aforesaid, arising, growing, and to be brought or promoted against every other person or persons whatsoever, inhabitants of India, residing in the said provinces, districts, or countries of Bengal, Behar and Orissa, upon any contract or agreement in writing, entered into by any of the said inhabitants, with any of His Majesty's subjects, where the cause

of action shall exceed the sum of five hundred current rupees, and when such inhabitants shall have agreed in the said contract, that, in case of dispute, the matter shall be determined in the said Supreme Court of Judicature." [1] It is also provided that in all such cases even if a suit be already commenced in some of the Courts of Justice already established in the said provinces or districts, it shall be lawful for either party, before or after sentence or judgment pronounced therein, to apply to the Supreme Court and have the matter determined therein, "in like manner as if no proceedings had been in such other Court of Justice." [2] As Sir James Stephen says: "It is remarkable that nothing is said as to the law to be administered in such cases.

1 Charter, Sec. 13.

2 Charter, Sec. 17.

It should be noticed that the Courts of Justice already established in the country are recognised as Courts of Justice. The point is important because a certain amount of misconception prevails with regard to it.

The implication, no doubt, is that it was to be the law of England." [1]

As to the jurisdiction of the Court certain exceptions were made with regard to the Governor-General and the members of the Council, as also the Chief Justice and the other Judges. These were not to "be subject or liable to be arrested, or imprisoned, upon any action, suit, or proceeding in the Supreme Court, except in cases of treason or felony ; nor shall the Supreme Court of Judicature be competent to hear, try, and determine, any indictment or information against the Governor-General and members of the Council, not being treason or felony, which the said Governor-General or any of the said Council, may be charged with having committed in Bengal, Behar and Orissa." It is further provided : "In all cases, wherein a Capias, or Process, for arresting the body is hereby given and provided, it shall and may be lawful, for the Supreme Court, to order the goods and

1 Stephen, *op. cit.*, Vol. 1., p. 18.

estates of such persons to be seized and sequestered, until he or they respectively shall appear, and yield obedience to the judgment, decree, decretal, or other order or rule of the said Court." [1] Under certain conditions appeal was allowed to the King in Council in civil cases by petition to the Supreme Court and in all criminal cases the Court was empowered to allow or deny appeal and to regulate the terms. It was also enacted: "Whereas cases may arise wherein it may be proper to remit the general severity of the law, we do hereby authorise and empower the said Supreme Court of Judicature to reprieve and suspend the execution of any capital sentence wherein there shall appear, in their judgment, a proper occasion for mercy until our pleasure shall be known."

It is not necessary for our present purpose to enquire into the various legal difficulties that arose in connection with the jurisdiction of the Supreme Court or what,

1 Charter, Sec. 34.

under a narrow and technical construction of the Act and the Charter, the Court might or might not have done. We are more concerned with the quarrel as it actually happened and in that connection several points demand our special attention. It has been seen that the Court was empowered to exercise jurisdiction over all persons directly or indirectly in the service of the Company or any of His Majesty's subjects. The intention is obvious. The servants of the Company were to be checked in their career of rapine and plunder and as in the past the banyans and *gomasthas* of the European servants of the Company had almost always played a very important part in the nefarious activities of their masters, they too were made subject to the jurisdiction of the Court. But, as can easily be seen, the expression "directly or indirectly in the service of the Company" was vague in the extreme and was bound to lead to different interpretations. In the Patna Case the Court decided that "a 'farmer' who rents the revenues for a stipula-

ted price which he is to pay to Government ……is, within the Act of Parliament and the Charter, subject to the jurisdiction of the Court, as being a person employed by, or directly or indirectly in the service of, the East India Company." Sir James Stephen remarks: "Whatever may be thought of the policy of the statute I do not see any answer to Impey's argument as to its meaning. What persons directly or indirectly in the service of the Company could it have been intended to bring under the provisions of the Regulating Act as to the Supreme Court if those who were employed in the collection of the revenue were not to be so included?" [1] In like manner, a salt-farmer or even contractors of various sorts who did some kind of work for the Government might be regarded as persons "directly or indirectly in the service of the Company" and thus subject to the jurisdiction of the Court. The expression "directly or indirectly in the service of the Company" thus became, as

1 Stephen, *op. cit.*, Vol II, p. 170.

we shall see, a source of endless troubles, and is a clear instance of the defects of drafting already referred to.

Another very fruitful source of difficulty arose out of the provisions that the Regulating Act made for the administration of the revenues. The Governor-General and Council, as we have seen, were entrusted with "the ordering, management and government of the territorial acquisitions and revenues", but "the Act fails to make clear beyond dispute whether the 'management, etc.' vested in the Council was, or was not, to be exempt from the jurisdiction of the Court." The view of the Court was that, as "oppressions and extortions represented in England to have been exercised by the officers of the collections, whether truly or falsely, were one *principal reason for the establishment of the* Court", it was certainly their duty to entertain suits against officers charged with such irregular and oppressive acts. On the other side, it was urged that a certain amount of severity exercised in connection with the

collections had been sanctioned by the immemorial usage of the country, and the provision in the Regulating Act that the Governor-General and Council were to do the ordering and management of the revenues "in like manner to all intents and purposes whatever as the same now are or at any time might have been exercised by the President and Council or Select Committee," gave them an exclusive right in the matter, independent of the jurisdiction of the Supreme Court. Herein again we have another instance of the defects in the drafting of the Regulating Act.

Further, as Sir James Stephen points out,[1] in describing the persons who were

1 Stephen, *op. cit.*, Vol II, p. 126. Stephen observes: "In one sense the whole population of Bengal, Behar and Orissa were British subjects. In another sense no one was a British subject who was not an Englishman born. In a third sense inhabitants of Calcutta might be regarded as British subjects, though the general population of Bengal were not." But, as Firminger points out (*op. cit.*, Introduction, p. cclvii), "that the Court was not intended to hold an unlimited jurisdiction throughout the provinces is clear from the repeated references to 'European and British subject,' to natives under the protection or in the employment of British subjects."

to be subject to the jurisdiction of the Supreme Court, the Act and the Charter use indiscriminately expressions like "all British subjects who shall reside in the kingdoms of Bengal, Behar and Orissa or any of them under the protection of the said United Company," "His Majesty's subjects," contrasted with any inhabitant of India residing in any of the said kingdoms, "the subjects of Great Britain, of us, our heirs, and successors", and "no definition is given of any of these expressions, though their meaning is by no means plain."

It is thus clear that defects of drafting obscured the real intentions of the Act and the situation, as we have said, was further aggravated by the more or less uncompromising attitude of the Majority on the one hand, and the equal obduracy of Le Maistre and Hyde on the other. Le Maistre often showed himself in a ridiculous light, and Hyde, whom Impey suspected of having been a victim to some "disorder", almost always acted in the spirit of a "violent partisan."

Indeed, Impey says that "Le Maistre and Hyde were restrained by himself and Chambers with the greatest difficulty from going to the length of saying that the Regulating Act had transferred all judicial power from the revenue authorities to the Supreme Court." [1] On the other hand, "As early as 23rd September, 1774, Clavering had appealed in a letter to Lord North despatched from Madras against the institution of the Supreme Court."[2] In a letter to D'Oyly Francis wrote: "I wish you would inquire and tell me in what dirty corner of Westminster Hall these cursed Judges were picked up." [3] In fact, several incidents in connection with the case of Nanda Kumar brought the two parties to the position of almost uncompromising hostility and though both talked of 'principles' the quarrel actually degenerated into one of personal rancour.

1 Stephen, *op. cit.*, Vol II, p. 148.

2 Weitzman, *Warren Hastings and Philip Francis*, p 40, f. n. I.

3 *Ibid.*, Appendix II, No. 14 c.

In the meanwhile the Majority had revived the office of the Naib Subah and the claim had been put forward that the Nizamat was entirely independent of the jurisdiction of the Supreme Court. A faint attempt appears to have been made even to make a distinction between the Company as Dewan and the Company as a purely mercantile body and admit the jurisdiction of the Court only with respect to the latter, but the Court made a short shrift of all these contentions and the quarrel rapidly developed on several lines. "The spirit of faction had penetrated the very precincts of the Court House and set the Judges cavilling at one another, while as things stood the Court was a terrible clog on the Government."

Hastings, however, had been acting more or less in agreement with Impey and in 1776, together with Barwell, propounded a scheme for settling the dispute, once for all, by extending the jurisdiction of the Supreme Court throughout the three provinces and providing for more intimate co-operation between

the Court and the Council. Hastings and Barwell wrote: "We presume that the Legislature did not intend by the act to form a complete system either of Government or Judicature, but rather an introduction to one more perfect, which should be accomplished by successive improvements, as necessity and experience might suggest them. To effect this it is necessary in the first place that the Government itself should be made entire; the powers which it is permitted to exercise should be legally annexed to it; the distinctions of Nizamat and Dewanny should be abolished, and the British sovereignty through whatever channels it may pass into these provinces should be all in all." [1] Accordingly they proposed that the jurisdiction of the Supreme Court should be extended to all parts of the provinces without any limitation, that the Courts which had been established on the basis of the old division of the Dewani and the Nizamat

1 Forrest, *Selections from the State Papers* (1772-1785), Vol II, pp. 496,497.

should be confirmed, that the Judges of the Supreme Court were to be united with the members of the Council in the control of the Dewani Courts, and that the Provincial Councils were to be conferred a legal authority in the internal government of the country and in the collection of the public revenue. [1] It appears that the Judges also approved of the scheme and it was sent to the Court of Directors in the form of a "Bill" to form the basis of a new Act of Parliament.

But the proposal was most vehemently opposed by the Majority [2] and nothing ultimately came of it. "It was denounced by Francis as a 'corrupt job'—a bone thrown by Hastings to Impey in reward for the latter's services at a critical moment in the Governor-General's career." [3] So the quarrel went on, and on the 22nd of May, 1776, the Court of Directors sent a petition to Lord Weymouth, one of the principal Secretaries of

1 Weitzman, *op. cit.*, p. 67.

2 *Ibid.*, Appendix III, No. 1.—The letter of the Majority to Lord North.

3 *Ibid*, p. 40.

State, wherein they complained, under several heads, of the ways in which the Supreme Court had been exceeding the limits of the jurisdiction given to it by the Act and placed the whole matter under the consideration of the Government. The Directors state that the Supreme Court "has extended its jurisdiction to *persons* whom it does not appear to have been the intention of the King or of Parliament, to submit to its jurisdiction; that it has taken cognizance of *matters*, both originally and pending the suit, the exclusive cognizance of which it had been the intention of the King and Parliament to leave to other Courts; that it has claimed a right of demanding evidence, and of inspecting records which it had no right to demand or inspect." They also point out that "the general principle which the Judges seem to have laid down in their proceedings against Nundcomar is, that *all* the criminal law of England is in force, and binding, upon *all* the inhabitants within the circle of their jurisdiction in Bengal." The Directors

then point out the dangerous implications of such a doctrine, refer to the case of Radha Charan Mitter, who, in 1765, had been convicted of forgery and sentenced to death, but on a representation being made by the native inhabitants of Calcutta, ultimately received a pardon, contrast this with the action of the Judges, in the case of Nandakumar, where they refused to exercise the power, especially given them in the Charter, of respiting the execution of the sentence till the pleasure of His Majesty could be known, and conclude this part of their case with the following statement : "If it were legal to try, to convict, and execute Nundcomar for forgery, on the Statute of George II, it must, as we conceive, be equally legal to try, convict, and to punish the Subahdar of Bengal, and all his Court, for bigamy, under the Statute of James I." Finally, the Directors state : "We apprehend, with our servants in Bengal, that the very being of Government in India depends upon having the power of each of its consti-

tuent branches fixed and declared; upon having the limits of the jurisdiction of the Supreme Court ascertained, upon having it known to the people what persons and matters are. and what persons and matters are not, within its jurisdiction. It is therefore, my Lord, that through your Lordship we beg leave to submit to his Majesty's consideration, the instances above recited, in which jurisdiction has been exercised by the Supreme Court of Judicature in Bengal, and deemed incompatible with the powers given by Parliament to the Governor-General and Council, which are said to obstruct the administration of Government, tend to alienate the minds of the natives, and, we fear, must prevent the establishment of the government of that country on any settled or permanent foundation."[1]

The Supreme Court's view of the matter was of course entirely different and their contention was that in every single instance they had acted within the four corners of

1 Touchet's Report, General Appendix, No. 3.

the Act and the Charter. The Judges claimed that "by mixing moderation with firmness, they have been enabled to do justice, without that disturbance of the peace, which the conduct of the Council seemed to portend to the settlement." With regard to the charge that the Court had tried to extend its jurisdiction over persons whom the Act had definitely excluded, the Judges asked their critics to remember the simple distinction "between judgment given by the Court and applications made to the Court," as also the fact that "the Judges have no discretion at all as to the causes which may be brought before it." And lastly, as regards the charge that the Court had interfered with the Company's revenue administration, a matter which the Regulating Act had vested solely in the Governor-General and Council, Impey wrote: "The Court do disavow, and always have disavowed, every interference in the ordering and managing of the revenue; they admit it solely and exclusively vested in the

Governor and Council, but they hold they should be guilty of a breach of trust, if they refused to take cognizance of the violence and oppressions made use of in the collections ; the notoriety and enormity of which, we have ever understood to be a principal cause of our mission." [1]

But these representations and counter-representations produced no immediate result and the quarrel went on with increasing vehemence. At last three more petitions being presented to Parliament, one from John Touchet and John Irving, agents for the British subjects residing in the provinces of Bengal, Behar and Orissa, and their several dependencies, the second from the Governor-General and Council, and the third from the United Company of merchants in England, trading to the East Indies, in all of which bitter complaints were made against the alleged excesses perpetrated by by the Supreme Court, a Select Committee

1 Touchet's Report, General Appendix, No. 3, Enclosure No. 28.

was appointed and to it all these petitions were severally referred. This Committee, commonly known as Touchet's Commttee, submitted a voluminous Report on the whole history of the controversy between the Supreme Court and the Supreme Council in 1781, and in the same year an Act was passed to regulate anew the Supreme Court of Judicature. Herein almost all the contentions of the Council were upheld[1] and the jurisdiction of the Supreme Court practically limited to the British subjects residing in the three provinces and the inhabitants of Calcutta.

The history of this famous quarrel can still be read, as Sir James Stephen says, in the appendices to the Report of Touchet's

1 Stephen's view (*op. cit.*, Vol. II, p. 192) is that the enactments of the Amending Act "show clearly that the Supreme Court correctly interpreted the law as it stood, that their decisions forced Parliament to find out its own wishes and express them plainly, and that Parliament was the real offender." This, however, does not exclude the possibility that the Court, in some matters at least, had taken advantage of the vagueness of the language of the Act and pushed their jurisdiction beyond its real intentions.

Committee. "They are four in number, and contain a large number of papers, in which all the principal matters in debate between the two bodies are described." But unfortunately these papers have not yet been utilised to the extent they should have been done. As far as we are aware, Sir James Stephen seems to be the only person who has directed more than a passing attention to this important question, but his treatment of the matter is, we think, inadequate in several vital aspects, particularly so, as he approaches the question primarily from the strictly legal and technical standpoint. This is nowhere more noticeable than in Sir James Stephen's treatment of the issue between the Court and the Council regarding the Zamindars, culminating in the famous Kasijora Case, where his strict adherence to the legal merits of the dispute blinds him to the fact that an action may be legally correct but at the same time it may be politically inexpedient or even morally wrong. The entire question, however, is too big and too

complex, and it will be our endeavour, in the present monograph, to throw some light on those aspects of the dispute, which Sir James Stephen treats rather cursorily or more or less completely ignores. We too would base our account primarily, as Sir James Stephen has done, on the Report of Touchet's Committee and its voluminous appendices.[1]

But the history of the quarrel can never be properly understood without some knowledge of the conditions on which the Court and the Council were superimposed and it is thus necessary to say something here about the work of administrative reform that Hastings had carried out during the

1 Stephen writes: "The volume in which the papers are printed is not even paged. The appendices are the Patna Appendix, the Dacca Appendix, the Cossijurah Appendix, and the General Appendix. The only possible mode of reference is by specifying the appendix and the number of the enclosure or sub-enclosure." This is not quite correct; the Report itself is paged, though the appendices are not. In referring to the Report, therefore, we shall refer to the page and for the the rest follow Stephen's method.

two years he had been the Governor of Bengal. The Court of Directors had notified their decision of "standing forth as Dewan", or in other words, of assuming directly the administration of the revenues through the agency of their own servants. It is well-known that the Mughal administration in the provinces was based on the fundamental distinction between the Nizamat and the Dewani, the former under the Nazim or the Subahdar and, comprising the departments of military organisation, general administration and criminal justice, the latter under the Dewan and concerned primarily with revenue administration and civil justice. Lord Clive had obtained the Dewani of the three provinces from Shah Alam in 1765 and the treaty with Najibuddowla had virtually placed the Nizamat as well in the hands of the Company. But both the departments were allowed to continue in the hands of the native functionaries, at whose head stood the Naib Subah, Mahammad Reza Khan, "in theory the ruler of

Bengal, in practice the instrument of the Company."

But this scheme of what has been called a "Double Government" completely broke down under the successors of Lord Clive. Power without responsibility and responsibility without power produced the worst of evils, and the first step towards reform was taken in 1770 when the Supervisors, who had been appointed the previous year to collect information, "were associated, under the joint control of Muhammad Reza Khan and two Councils of Revenue, composed of the junior servants of the Company, at Murshidabad and Patna, with the native agency in the collections. In 1771 the Revenue Councils had been made responsible to the Superior Council at Calcutta." But these measures failed to improve the situation. The root of the difficulty went deeper and it lay primarily in the anomalous arrangement made by Lord Clive.

Hastings therefore decided to break through this anomaly and to make the Company

directly responsible for the government of the country. For purposes of revenue assessment a Committee of the Board constituted itself into a Committee of Circuit to perform the local operations throughout the country. It was agreed that the land should be let out for a period of five years. As a precaution against concealment it was decided that the lands were to be let out on public auction but settlement was to be made with Zamindars wherever the terms offered by the latter were deemed reasonable. The Supervisors were now named Collectors and placed in charge of the business of collection in the several districts and a native officer, called Dewan, was in each district associated with the Collector. No banyan or servant of the Collectors was permitted to farm any portion of the revenues. Finally, the chief office of revenue or the Khalsa was removed from Murshidabad to Calcutta and placed under the immediate control of the Governor and Council.

The regulations for the reform of the judicial system were based on the old

division between the Dewani and the Nizamat. Two Courts, one civil and the other criminal, were created in each district. The Foujdari Adalat or the criminal court consisted of the Collector as the Superintendent with the Kazi and the Mufti of the district and two Maulavies as interpreters of the law. The Dewani Adalat or the civil court consisted of the Collector as the President, assisted by the provincial Dewan and the native officers of the Court. All cases were made amenable to the jurisdiction of this tribunal, excepting those of succession to zamindaries and talukdaries, which were reserved for the Governor and Council.

In Calcutta were established two Courts of Appeal, the Sadar Dewani Adalat for civil, and the Sadar Nizamat Adalat for criminal cases. The Sadar Dewani Adalat was to consist of the Governor with two members of the Council, attended by the Dewan of the Khalsa and certain officers of the native court of the city. The Sadar

Nizamat Adalat, on the other hand, was to consist of a Chief Judge called Darogah-i-Adalat, assisted by the chief Kazi, the chief Mufti and three eminent Maulavies. All capital cases were to be referred to this tribunal and it was to act under the general superintendence of the Governor and Council.

But the Court of Directors ordered the Collectors to be withdrawn from the districts and "to substitute some other plan" and consequently early in 1774 further changes were effected. The districts were retained and it was decided that "each district was to be superintended by a dewan or amil, except such as had been let entire to the zamindars or responsible farmers, who, in such cases, were to be invested with that authority." The provinces of Bengal, Behar and Orissa were placed under "five Provincial Councils, each Council to consist of a Chief, four senior servants, Persian translator, accountant and assistants, and a dewan to be appointed by the Government," and at

Calcutta was established "a Committee of Revenue consisting of two members of the Board three senior servants, Secretary, Persian translator, assistants, and the Ray Royan as Dewan."[1]

These changes consequent on the withdrawal of the Collectors from the districts necessitated certain readjustments in the system of judicial administration as well. It was therefore provided: "That the Naibs of the districts under each Provincial Council were to hold Courts of Dewani Adalat, according to the present Regulations, and transmit their proceedings to the Provincial Councils; but appeals in all cases were to be allowed from them to the Provincial Sadar Adalat of the Division. These Courts of Provincial Sadar Adalat were to be superintended in rotation by the members who are not of the Council of Fort William; to decide ultimately on all cases not exceeding 1,000 Rupees: in cases exceeding that sum, an appeal to lie, as at present, to the Sadar

1 Firminger, *op. cit.*, p. ccxxxiv.

Dewani Adalat. In all cases, the Provincial Councils at large may revise the decision of the Superintending member. Complaints against the head farmers, naibs of the districts, Zemindars, and other principal officers of Government relative to their conduct in the revenue, to be decided by the Provincial Councils and entered on their proceedings : if any of them think themselves aggrieved, they may apply immediately to the Superior Council of Revenue at Calcutta."[1]

Such, in outline, were the administrative arrangements of the Company in Bengal when the Judges of the Supreme Court and the new Councillors arrived on the scene. It can be easily seen that the whole thing was yet in an experimental stage and much of it actually recognised to be of a temporary character. Questions were, however, soon raised as to their legality as well. In the case of Sarup Chand Justice Le Maistre, in his judgment, remarked that "a man 'might as well say that he was commanded by the

1 Firminger, *op. cit.*, pp. ccxlii, ccxliii.

King of Fairies' as by the chief and provincial Council of Dacca, because that body was not a corporation known to the law." Sir James Stephen's view is that what Le Maistre said was clear and good sense, though there was a clumsy attempt at playfulness about it, because "No one except the Governor-General and Council and the Supreme Court, had any defined legal rights or position, and it was impossible to say that the Government had any legislative power or any sort of effective substitute for it."[1] It would follow from this, as Firminger points out, that "the Revenue Courts held by the Provincial Councils were not lawfully founded Judicatures." However, "such a conclusion, as Sir James recognises, would have been in practice a monstrous and intolerable absurdity, yet surely, if it would have been so monstrously and intolerably absurd for the judges to dispute the validity of the Diwani Adalats, it was no less monstrously and intolerably absurd to advance the

1 Stephen, *op. cit.*, Vol. II, pp. 154, 155.

po sition that the Revenue Councils were merely ideal bodies, and that a Chief of a Revenue Council was as, in the eye of the law, real a person as the King of the Fairies." [1] Indeed, it seems beyond dispute that the provision of the Regulating Act vesting in the Council the ordering and management of the territorial revenues "in like manner to all intents and purposes whatever as the same now are or at any time hereafter might have been exercised by the President and Council or Select committee in the said Kingdoms" gives a legal sanction to the arrangements existing for the purpose. And the Charter also, as we have seen, is not, as Firminger supposes, wholly "silent as to persons and judicatures other than those originated by the Act",[2] but recognises the existence, and indirectly the validity, of the Courts then functioning in the three provinces.

1 Firminger, *op. cit.* p. cclxviii.
2 Firminger, *op. cit.*, p. cclvi.

CHAPTER II

The Supreme Court and the Zamindars

In the history of the quarrel between the Court and the Council, the most acute and the most persistent was the dispute that arose in connection with "the Writs issued by the Supreme Court into all parts of the Provinces, for bringing up Zemindars, Farmers and other natives, proprietors of land, to the Court of Calcutta, at the suit, and to answer complaints, of natives." The dispute commenced almost as soon as the Supreme Court started its activities, persisted in increasing volume and intensity throughout the period under review, and ultimately culminated in the famous Kasijora Case, which very nearly led to a civil war in the public streets of Calcutta, and which, in the words of Sir James Stephen, presented "the discreditable spectacle of a

governing Council marching troops against the officers of the Supreme Court."[1] The Council complained of "the reiterated efforts of the Supreme Court to establish a jurisdiction co-extensive with the authority of the Government in this country,"[2] whereas the Supreme Court said: "The Court is open to the suitors, none are invited but all may fly for justice".[3] The Council finally took its stand on political necessity, and the Court on law as they understood it.

But to judge between law and political necessity, a cursory study of the points involved in the Kasijora Case alone, as has practically been done by Sir James Stephen, is hardly adequate and a close analysis of the background against which it arose is imperatively necessary. The dispute, as we have said, began very early in the career of the Supreme Court and in January, 1776, we find the Provincial Council of Calcutta

1 Stephen, *op. cit.*, Vol. II, p. 220.
2 General Appendix, No. 13, para I.
3 *Ibid*, Enclosure, 28.

describing the effects of the Court's writs issued upon Zamindars on the revenue administration of the division, in the following words: "From daily experience we find the authority with which we are invested, being absolutely or very nearly annihilated; our black servants fear to do their duty, and we know not how to compel them; we are almost tempted, from despair of being able to conduct the business of our department, either to our own credit, or the satisfaction of our employers, to request permission to resign our several employs in the revenue branch; but as we consider such a step might subject us to the censure of diverting the interests of our employers at a time when our most strenuous services are required, we are determined to persevere, in the best manner we are able, in our endeavours for their service; relying on their justice, not to hold us responsible for that success in their affairs which we have not the power to procure"[1]. Such complaints came from

1 General Appendix, No. 3; Enclosure, 12.

almost every district and there can be little doubt that the processes of the Supreme Court constituted a serious interference with the revenue administration of the country. The Company was put to material injury and there are definite instances where indemnifications had to be paid to individuals. It will thus be seen that a mere academic discussion as to the law of the matter, as to whether the Supreme Court acted legally within its rights, cannot give us the necessary perspective for arriving at a proper and balanced judgment on the question.

Nor was this all. Instances are on record which unmistakably show how the processes of the Supreme Court unexpectedly and wantonly interfered with the administration of justice in the Criminal Courts and brought utter cofusion in their affairs. Other instances show how the procedure adopted by the Judges opened a wide field for designing persons, who, with the assistance of dishonest lawyers, instituted

fraudulent cases in order to have the protection of the Supreme Court for the purpose of evading or procrastinating payments to their creditors, or of harassing innocent victims, and sometimes even of creating difficulties to the Government. The arrogance and harshness of the Court's officers, particularly the bailiffs and the peons, soon made it an object of odium to the people at large and it was a cruel irony of fate that the Judges who often talked of their principal mission as having been the protection of the natives from the tyranny and oppression of the Company's servants, themselves became the greatest objects of terror and detestation throughout the country. We think it therefore clearly necessary that the matter should be considered in detail and we would forthwith proceed to give short accounts of some of the more important cases so that the reader may guage for himself the situation that arose. The cases selected will be taken in groups, each group possessing distinguishing features

of its own and illustrating a particular point in the dispute.

One of the earliest cases on record is that of Hari Kissen Tagore, who was "a farmer of the pargana of Aursah, in the province of Burdwan, at the annual rent of about one lak of rupees." On the 15th of April, 1775, Hari Kissen Tagore submitted a petition to the Governor-General in Council in which he stated that Kali Prosad Bose, in the name of his infant son, Ram Prosad Bose, had rented from the petitioner several villages at the annual sum of 17,000 rupees and that Tilak Ram Bose was the Malzamin or security for the said Kali Prosad Bose, who was, in like manner, security for his infant son, Ram Prosad Bose. The petitioner further states : "It is the established custom of the province of Burdwan for the Malzamin or Security to pay the rent and that the rent for the said villages has been constantly settled at Burdwan, by the Gomastha of the said Tilak Ram Bose and the petitioner." Now the complaint was that Tilak Ram Bose

was in arrears and the petitioner, Hari Kissen Tagore, accordingly filed a complaint before Mr. Stephenson, the Chief of the Council of Revenue at Burdwan, who thereupon sent two peons with a parwana to Tilak Ram Bose, asking him to pay the balance or come to Burdwan to settle the account. Tilak Ram Bose promised to pay up the balance of the rent in four days' time but Hari Kissen Tagore, to his great surprise, received on the 11th of April a letter from Mr. James Pritchard, Attorney at Law, "wherein he is told, that if he has any suit to commence against Tilak Ram Bose, and Kali Prosad Bose, or Ram Prasad Bose, he must carry them into the Supreme Court at Calcutta, to which only these people are amenable ; and wherein further, he is threatened with a prosecution for the demand made upon them by the Revenue Council of Burdwan". The Attorney claims that his clients are residents of Calcutta, and as such, are under the jurisdiction of the Supreme Court, and cannot be sued in any other court.[1]

1 General Appendix, No. 3 ; Enclosure, 6.

It does not appear that the case was, in any form, taken before the Supreme Court but it clearly showed that troubles were ahead. It could be foreseen that if the Supreme Court interfered in such cases, the revenue officers would be powerless to enforce their orders and great confusion would result. The next case that we would notice, viz., the case of Raja Cheyton (Chaitan or Chetan ?) Singh, Zamindar of Visnupur, took the matter a step further and the Governor-General and Council loudly complained of the alleged injustice and irregularity of the Supreme Court. But before we proceed further it is necessary to say something about the procedure adopted by the Supreme Court in these cases after the suit had been instituted. As Sir James Stephen says : "The procedure in the mofussil in cases before the Supreme Court was the ordinary English procedure in civil actions at common law slightly modified, that is to say, a writ was issued, and served, and if the defendant did not thereupon put

in bail to answer the action he was liable to be arrested, as the phrase was, 'on mesne process,' and imprisoned till his case was heard, which might be for many months. The only modification introduced into this by the rules of the Supreme Court was that an affidavit as to the fact which was said to make the defendant liable to the jurisdiction of the Court was required of the plaintiff, and the writ was not issued until by this means a *prima facie* case had been made out for its issue to the satisfaction of one of the judges of the Court"[1] To this it should be added that in all cases of debt below one hundred rupees it was the general rule to issue a Summons ; in matters of personal wrong and also in cases, where the debt amounted to one hundred rupees and above, a Capias was issued.[2]

Now, Cheyton Singh of Visnupur had been sued in the Supreme Court for an old debt and a writ was served upon him requiring

1 Stephen, *op. cit.*, vol. II, pp. 144, 145.

2 Touchet's Report, p. 70, Evidence of William Hickey.

his attendance before the said Court. The Raja wrote to the Burdwan Council for advice and the latter asked him to come to Burdwan with the peon sent from Calcutta. On the Raja's arrival bail was temporarily arranged for. The Provincial Council of Burdwan wrote to the Governor-General in Council : "As the Raja is not only a person of some rank, but also one of the joint renters of the Bissenpore Province, and is likewise in arrears to Government to the amount of 36,000 rupees, we thought that a compliance with the warrant would, in a great degree, hurt his credit ; and, as he is much involved in debt, the evident consequence of his going to Calcutta, would be a number of claims on him from different quarters. We have therefore in our private capacities satisfied for the present the Sheriff's officer, in granting him bail for the Raja's appearance in the space of 20 days."

But this arrangement of the Burdwan Council did not work. Four days later, on the 17th of April, 1775, they wrote again to

the Governor-General and Council to the effect that a bailiff had come to Burdwan with a warrant to seize the person of Cheyton Singh and carry him to Calcutta, for contempt of Court in not answering to the summons ; and as the Sheriff's officer was positively directed not to accept bail, Cheyton Singh had to proceed to Calcutta in charge of the bailiff. [1]

It appears from a letter of the Attorney to the Honourable Company to Richard Sumner, Secretary to the Revenue Department, that the Council decided to defend the suit for the Raja and to make it a matter on which to try the jurisdiction of the Court. The Company's Attorney appeared before the sitting Judge and gave an undertaking that 'Appearance to the Suit' should be entered for the Raja. Thereupon Cheyton Singh was discharged. But the Raja was soon after arrested again and had to remain a prisoner in the common gaol for some weeks. Under the direction of the Governor-General

1 General Appendix, 3 ; Enclosure, 7.

and Council the Secretary to the Revenue Department applied for permission to inspect the Sheriff's Book. The requisite permission being granted, the Affidavit on which he was arrested for the second time showed that he was seized as an inhabitant of Calcutta. The Affidavit upon which the earlier writ was issued was also examined and it was found that the Affidavit stat edthat the Raja "was subject to the jurisdiction of the Court, for holding an employment in the Revenue Department, under the Honourable East India Company, for which he receives a certain salary by the year or otherwise, for such his employment under the Honourable Company."[1] The salary referred to was nothing but a stipend from the Government given to the Zamindars when dispossessed of their lands and continued to those who were re-admitted to rent them themselves, as was the case with Cheyton Singh.[2] The Governor-General

1 General Appendix, 3 ; Enclosure, 10.

2 *Ibid*; Enclosure, 9.

in Council observed : "The whole proceeding against the Raja of Bissenpore appears to us replete with irregularity and injustice—He is first seized at a distance of eighty miles from Calcutta, for holding an employment under the Company ; being then dragged down to Calcutta, he is arrested as an inhabitant of this place, and thereby made subject to the above jurisdiction, and cast into the common gaol. If the first ground of his arrest was not sufficient to justify it, the seizing his person, and bringing him to Calcutta, was a mere act of violence, and could not, upon any principle of law or justice, subject him to the condition of an inhabitant of this place, where he never had a voluntary residence : If it was sufficient, there was no necessity of describing him as an inhabitant of Calcutta, in order to justify his imprisonment here ; the assuming a second description of the same person, seems to us to invalidate the first ; either way we see no foundation for the jurisdiction assumed over him. His case, as a principal

Zemindar receiving a portion of the rents of his land, under the title of an allowance or pension from the Company, whose representatives here, in their character of Dewan, thought fit to transfer the management to other hands, involves that of almost all the Zemindars in the country."[1]

It seems, however, that the Raja's plea to the jurisdiction was allowed and the case after all was not brought to trial. But others of a similar nature cropped up in plenty and led, as the Revenue officers complained, to considerable dislocation of business. The next case that we would notice, is that of Raja Indra Narayan, the Zamindar of $\frac{7}{16}$ of the Tumlook pargana. In this case we hear, for the first time, about the 'brutality of the bailiffs', a complaint that was made much of, in many cases, throughout the whole of the period under review. In a letter to the Provincial Council at Calcutta Raja Indra

1 General Appendix, 3; Enclosure, 10—The Governor General and Council at Bengal, in their Revenue Department, to the Court of Directors.

Narayan stated that he owed one Gopi Nazir, 8,500 rupees together with interest and that of this sum he had already paid him 5,000 rupees and given security for the remainder. But as owing to various difficulties, he had not been able to pay the balance in time, Gopi Nazir had sued him in the Supreme Court and taken out a warrant. Two peons had arrived in his Kachari and terrified the people employed in the collections with the result that his business was practically at a standstill. He asked the advice of the Committee as to how he should proceed in the matter.[1] In a second letter the Raja stated : "I never was in the service of any English gentleman nor am a Pottah Holder in Calcutta, but one of the King's Zemindars ; yet Gopi Nazir has entered a prosecution against me in the Supreme Court, for an old debt, and sent after

1 General Appendix, 3 ; Enclosure, 12. In the records the name of the zamindar is written twice as Anunderam which must be Anandaram and twice again as Indenarrain, which, I think, should be read as Indra Narayan.

me a warrant and peons. They arrived while I was making tour of the Pergunnah in order to look after the business, both of the grain and salt ; the common door was shut, but they climbed up the post, and made their way in ; they passed through two apartments, and seated themselves in those which contained the women ; they prohibited them from fire and water, and began to be abusive·····I am unacquainted with the business and nature of Courts and shall not be able to support my cause in it. I am required to give a Pottah Holder of Calcutta for my security. I live at a distance from Calcutta, and have no one whom I can give for my security there·····should this suit be prosecuted in the Supreme Court, neither my life nor my Zemindary would be secure. I beg the cause may be settled either in the Khalsa or in the Zella."[1]

With regard to this case of Indra Narayan the Calcutta Council, in their letter to the Governor-General and Council, observe : "We

1 General Appendix, 3 ; Enclosure, 12.

are sensible the general Regulations have directed that no individual indebted to Government shall be called on in the Mofussul for private engagements, until those of the public are discharged ; but the Court of Judicature having thought proper to act contrary to this Regulation in the present instance, we have no other resource but your determination for our guidance in this and similar cases which may in future occur.—At the same time we think it our duty to represent, that we have for sometime felt the fatal effect of the Court's interfering in revenue matters, from the backwardness of the farmers to discharge their kists, and our officers in doing their duty ; and we must beg leave to declare, that it will be utterly impossible for us much longer to conduct the business of our department, if our officers, and people employed in the collections, be not properly supported. And we make no doubt heavy claims of remission will be made on us, at the conclusion of the year, by this Zemindar, for the damage he may

sustain by the desertion of his people at the critical season ; and we apprehend Government must be obliged to sustain the loss ; he proves it has been incurred through this interference of the Court of Judicature."[1]

Near about the same time four cases occurred and we have almost the same story repeated. The defendants all complain about the difficulty of procuring a pattah holder of Calcutta as security, point out the losses that the collections were bound to suffer from, exhibit an unmistakable terror of the Supreme Court and its procedure, and all pray that their cases might be tried in the Khalsa or the Zilla Court. And it is important to note that none of these cases, after all, went to actual trial, the defendants' plea to the jurisdiction having apparently been accepted.

But it was not the Zamindar alone who thus suffered from the processes of the Supreme Court. We have several cases on record where we find the servants of Zamin-

1 General Appendix, 3 ; Enclosure , 12.

dars sued in the Supreme Court and writs issued against them. Besides several cases like those we have discussed above, the Provincial Council of Dacca, in their letters of 30th October 1775 and 21st December 1775, mention two others which show that writs were issued against the Naibs and Shikdars of the Zamindars as well.[1] In the first instance, the Naib of the Zamindar of Chandradwip was seized and confined, and in the second, the Shikdar of the Zamindar of Muddidea was taken to Calcutta and confined in the common gaol, though in both the cases it was emphatically stated that the Naib or the Shikdar had never been in the employ of "any of his Majesty's subjects." It is needless to add that the enforced absence of these officers undoubtedly hampered the business of collection.

Two cases that we would now notice are of a different character because they both relate to matters of criminal jurisdiction and the interference of the Supreme Court acted

1 General Appendix, 3 ; Enclosures, 11, 13.

in a more serious way. The facts of the first case are stated clearly in an *arzee* submitted by Subharam and Ajooderam (Ayodhyaram?) Ghoo (Guha?) to the Provincial Council at Dacca. It appears that there was a quarrel regarding the possession of a *char* between two rival groups of Zamindars and two persons on the side of the petitioners were killed and five others carried away by the opposite party. The dead bodies were brought before the Chief of Dacca and a representation detailing the particulars of the case was also placed before him. Thereupon the Chief called Ramnarayan Munshi (possibly somebody connected with the other side) and took a *muchalka* from him to produce the rioters in the space of ten days. In the meantime, one Joyram, a Gomastha of the other party, preferred a complaint in the Supreme Court against Subharam and Ayodhyaram and brought up a European and two peons with a warrant, who seized and confined the petitioners. It can be easily seen that such instances were

bound to lead to confusion and make it extremely difficult for the authorities to maintain law and order, but the other case was, in a sense, even more serious. A Talukdar of Sutaram preferred a complaint against the Zamindar of Sarail for robbery and also for causing his ryots to desert. The case was tried in the local Faujdary Court and decided upon. But Kesharam, a partner of the complainant, again preferred a petition on the same matter before the Supreme Court, brought out a warrant and apprehended the said Zamindar of Sarail. As can be easily seen, this was bound to undermine the authority and prestige of the local Faujdary Court. The Provincial Council at Dacca wrote: "We dread the consequences with which the Government's revenue will be affected, if the authority of its Courts is set at nought, and the persons of Zemindars and Talukdars are liable to be carried away to Calcutta, upon every dispute or every fray which may arise in a District, where the proprietorship of the land is so

extremely diffusive as in Dacca, and where the spirit of the inhabitants is so remarkably turbulent and litigious……We should be wanting in our duty……if we were to refrain from remonstrance when we see men, neither connected with Europeans, nor conversant in their customs, forced away to be tried as criminals upon the solemn charge of life and death, at the distance of three hundred miles, from their friends and families, in a language and mode of process totally unknown to them, in the Court of a British Sovereign, who has never been formally announced to them, and by the test of laws, which have never been promulgated."[1]

Further details regarding the case of Ayodhyaram and Subharam, which can be gathered from the evidence of Mr. Farrer, incorporated in the Report, show unmistakably why the Supreme Court and its processes were becoming a terror to the people of the mofussil. A harder and more

1 General Appendix, 5.

cruel case can hardly be imagined. Mr. Farrer stated that he had been retained and employed as counsel on behalf of Ayodhyaram and Subharam, and 13 or 14 other persons against whom also indictments for murder were preferred for the same transaction. Subharam and Ayodhyaram were brought prisoners from the province of Dacca by a warrant granted by Mr. Justice Hyde, who committed them to the common gaol in Calcutta. As it appeared to Mr. Farrer that the warrant was bad, both in form and substance, and as these persons were by no means objects of the jurisdiction of the Court, he moved before the Court that "they should either be discharged from confinement, as committed under a bad warrant, or that they should be admitted to bail, on the special circumstances of the case. The Court admitted the warrant to be bad, but instead of releasing the prisoners amended the warrant, and refused to admit them to bail. One session of Oyer and Terminer was held sometime subsequent to

the commitment of these prisoners, at which, convinced of the goodness of their cause, he had pressed to bring on their trial to the utmost of his power, but to no purpose, as the Prosecutor positively refused so to do." Mr. Farrer further stated that "application was more than once made to him, on behalf of the prisoners, stating, that they were very heavily ironed, insomuch that the irons had eat (eaten) into their flesh and that they were apprehensive of a mortification taking place; and that the other hardships they underwent in prison, were so great, that they were scarce able longer to support nature." These matters were put before the Court by Mr. Farrer, when they were enquired into and found to be in a great measure true. In consequence the nature of their confinement was made somewhat easier. When, at last, after about *eleven months* the prisoners were brought to trial, "pleas to the jurisdiction were put in to all the indictments, and from the evidence of the first witness produced on the part of the

prosecution, it appeared to the satisfaction of the Court, that the defendants were not objects of its jurisdiction, and they were discharged accordingly". Mr. Farrer added that the cost to the defendants and their principals could not have been less than £3000, and that not a shilling of it was defrayed by the East India Company.[1] The case thus speaks for itself and we find it difficult to believe that it could have been beyond the ingenuity of the Judges to devise some means to put an effective stop to such meaningless and uncalled for harassments.

The next group of cases, of which we would notice only two, has also certain characteristic features quite their own. In these cases the question of jurisdiction was not involved[2]; both of them went to trial and the

1 Evidence of Mr. Farrer, *Report*, p. 63.

2 With regard to the case of the Zamindars of Fateh Singh a point may possibly be raised as to the question of jurisdiction. The Charter, as we have seen, provides that in case the cause of action exceeded Rs. 500, and one of the parties was a subject of his Majesty and the other, an inhabitant of India residing in the three provinces, the Court could exercise jurisdiction, if there was a written agreement between the parties to that effect. So, unless Jogamohan was an inhabitant of Calcutta the Court's jurisdiction did not arise.

plaintiffs were given decrees. But when these decrees were sought to be enforced it was found that they infringed some vital rights of the Government and consequently they were resisted. Thus an ugly situation arose which was only saved by a compromise arrived at between the parties. The first case was that of the Zamindars of Fateh Singh. To enable them to pay up their revenue the Zamindars had taken a loan from a merchant named Jogamohan and in the bond that they signed for the purpose a clause was inserted by which they expressly subjected themselves to the jurisdiction of the Supreme Court. On this bond they were sued in the Supreme Court and in course of time a warrant of sequestration was issued, to execute which a Serjeant was sent. He sealed up the Kachari and other *Daftars* or offices of the zamindary and put a total stop to the collections. Being informed of the situation by the Murshidabad Council, the Governor-General and Council immediately sent a civil servant named Mr.

Wroughton to take charge of the management and collection of the revenues of the zamindary of Fateh Singh.

In the meantime the case came to trial and judgment was passed against the Zamindars. "A writ of execution was taken out, the Zamindars absconded, and the Sheriff, understanding that they had houses and were proprietors of extensive territories, attached the zemindary and advertised it for sale."

Immediately a very difficult situation arose. The Governor-General and Council obtained a copy of the publication made by the Sheriff for the sale of the zamindary, and being of opinion "that the intended act of the Sheriff was contrary to the law and immemorial practice of this country, by which no zemindary can be alienated or transferred from the actual zemindar, without the consent and formal sanction of Government first had and obtained: nor the new zemindar allowed to enter on possession, or to collect the rents from the ryots, or to exercise

any of the zemindary rights, without a sunnud granted by Government for those purposes ; and if permitted to take effect, would not only be subversive of the rights vested in the Company, and in this Government, by the clause of the late regulating Act of Parliament" (regarding the ordering, management, and government of all the territorial acquisitions and revenues, etc.), they unanimously resolved 'to prevent so dangerous a precedent' and published the following advertisement :

"Whereas an advertisement has been published, by order of the Sheriff, for the sale of the zemindary of Futty Sing, on tomorrow, being Wednesday the fourth of November ; notice is hereby given, that no sale or alienation of a zemindary in the jurisdiction of the Dewanee of Bengal, Behar and Orissa, is or can be valid, without the consent and concurrence of the Governor-General and Council being first had and obtained ; nor any person allowed to take possession under such a sale, or to levy rents from the ryots,

or to exercise any other rights as zemindars, without a Sanad granted for those purposes : and that this warning is given to prevent the consequence to which persons disposed to bid at the public auction for the zemindary above-mentioned, might be liable, through ignorance of them."

And as a mark of respect to the Judges, the Company's Attorney was directed to inform them of the advertisement published by the Sheriff and the resolution of the Governor-General and Council thereon, "submitting it to their judgment, to issue such further orders and instructions to the Sheriff, for his better guidance, as the nature and circumstances of the case, and the danger of establishing such a precedent, might appear to them to require."

Previous to this, when the warrant of sequestration had been executed, the Council ordered the institution of a suit in the Supreme Court of Judicature, "against the Sheriff or his officer, for the loss which the Company had sustained in the collection

of the revenues," and, at the same time, the Commissioner of Law Suits had been asked to assure the Sheriff that if he would remove his seals and return his Writ against the Zamindars of Fateh Singh, *Nulla Bona*, the Government would defend the suit which might be brought against him by the plaintiff. But, as owing to the advertisement of the Sheriff and the counter-advertisement of the Government the situation had now changed, it was resolved that the matter should be reconsidered. Mr. Bogle, the Commissioner of Law Suits, submitted a report stating his opinion as to how the Council should proceed in the matter, and the idea of instituting a suit against the Sheriff was dropped. Mr. Bogle reported that "the Vakeels of the zemindars of Futty Sing, in order to prevent the threatened sale of their zemindary, have prevailed on merchants to lend them money sufficient to discharge the judgment against them, provided the Board will allow their constituents to give a mortgage on their zemindary for the loan, to be registered in

the Khalsa." He left it to the Council to judge whether the Zamindars were to be allowed to grant such a mortgage. He also informed the Council that the Sheriff was agreeable to the Board's proposal of removing his seals and returning his writ against the Zamindars of Fateh Singh, *Nulla Bona*, on the assurance that they would defend the suit which might in consequence be brought by the plaintiff against the Sheriff. And as regards the proposal of instituting a suit against the Sheriff, Mr. Bogle was definitely of opinion that it would be inexpedient. Briefly stated his argument was that hitherto the Zamindars, in cases against them in the Supreme Court, had always pleaded to the jurisdiction, and, in almost all cases, their plea had been sustained. Consequently "the Zemindars cannot be rendered more independent of the Court, by any decision which may be passed regarding them". On the other hand, a judicial decision regarding their rights and tenures was likely to have important consequences

on the Government of the country. In short, in whatever way the question may be decided, whether the Zamindar is declared to be a hereditary officer, or whether he is declared to be an absolute proprietor of his zamindary, "it is likely to open a wide field for litigation, and serve to involve this Government in suits brought directly against the Company, or which can be defended only by them and their Officers." After a discussion of the Report of Mr. Bogle the Governor-General observed: "After a mature consideration of the subject, I am of opinion, that the expedient offered by the Commissioner of Law Suits, to indemnify the Sheriff from the consequences of any suit brought against him by the Plaintiff, for conforming to the opinion of the Board, is the most eligible that can be chosen in the present case. It may stop this affair from proceeding further, nd by its influence serve in the place of a recedent that may deter others from similar laims." His colleagues concurred and thus nded the case of the Zamindars of Fateh

Singh, which had at one time threatened to bring the dispute between the Court and the Council to a crisis.

In the second case, the parties were both European British subjects and so the question of jurisdiction did not arise. John Doe, who, as Sir James Stephen says, 'was still in his prime', instituted a suit in the Supreme Court against one Henry Robinson with regard to certain lands in the pargana of Bhulua, which, he said, had been demised to him by Chandramani and Sarveswar. He got a decree and a European Serjeant, sent from Calcutta, put him in possession of the said lands. It appears, however, that the said Robinson held the lands by virtue of a decree passed in the Adalat against Chandramani and Sarveswar, from whom John Doe claimed his title. Mr. Shakespear, the Chief of the Dacca Council, thought that this was an exercise of authority on the part of the Supreme Court which 'went to the immediate abolition of the legal powers of the Government', and he ordered the

appointment of a Sezawal for the collections of the taluk in question, with directions to pay the same into the Bhulua Kachari. The Governor-General and Council approved of the measure and there the matter apparently ended. This was, no doubt, an actual interference with the process of the Supreme Court, but nothing further appears in the records, and it may not therefore be improbable, as the Dacca Chief suspected, that the case was "a trick of some lawyer, who has hurried through the papers in course of official business, without advertising the Honourable Judge who directed the Writ, of its real intent."[1]

It will thus be seen that the processes issued by the Supreme Court in the suits of individuals against Zamindars were raising complications of various kinds, one after another, and creating difficulties for the Company's servants, particularly for those who worked in connection with the revenues. But this was not all. It was idle to expect

1 General Appendix, 14.

that designing persons would not take advantage of the opportunities that the Supreme Court afforded and we have several cases on record which tend to show that Zamindars, in their turn, resorted to the Supreme Court, either openly, or fraudulently in the name of others, in order to procrastinate payment of their debts, to withhold what was justly due from them, or to resist enquiry into their affairs. A very interesting case of the last type occurred within the jurisdiction of the Provincial Council at Murshidabad in January, 1777. It appears that the Calcutta Committee of Revenue and the Provincial Council of Murshidabad had jointly sent two Amins to carry out investigations in the pargana of Muhammad Shahi with regard to "certain rights which had been for a long time in the possession of the Khas Taluk officers." When the Amins arrived these people absented themselves and kept away for four months, when suddenly the Amins received a summons from the Supreme Court on a complaint

preferred there by these persons. The Murshidabad Council suspected that the Zamindar of Muhammad Shahi was behind all this and that his purpose was to elude the investigation. The Council observe: "It will be needless for us to comment on such behaviour, the impropriety of it, and the consequences of the Zemindars applying to the Supreme Court, merely to avoid the authority of the Councils under whom they are immediately placed, must be evident to all."[1]

Several cases where Zamindars and farmers fraudulently took shelter under the shadow of the Supreme Court's authority in order to delay or avoid payments are referred to in a petition of the Burdwan Dewan to the Honourable Board. On being called upon to pay the balance of revenue due from the zamindary of Burdwan, the Dewan, Kali Prasad Singh, made this representation, in which he showed how collections were being hampered by farmers and malzamins.

1 General Appendix, 15.

The first case that the Dewan mentions is that of Maharaja Naba Kissen (Krisna) who farmed two mahals in the zamindary of Burdwan at a rental of Rs. 36,000. It seems that the Maharaja did not pay a single rupee for the first year. The Dewan writes: "I cannot send peons to enforce payment from him, on account of apprehensions from the Supreme Court (the Maharaja being a resident of Calcutta) and my messages which are sent to him to this effect, he disregards." Similar was the case of Bacharam, who was security for Raj Chand Ray, another farmer under the Burdwan zamindary. The farmer fell into arrears and absconded, and as Bacharam was an inhabitant of Calcutta, he utilised in his favour the terror that the name of the Supreme Court inspired and denied obedience to the Dewan. The third case is of a different type and is much more interesting. One Santiram Chakravarti had likewise farmed two mahals for two years. "A balance of Rs. 16,000 fell due from those mahals. The farmer fraudulently disputed

the matter, and complained to the Burdwan Council; but those gentlemen having enquired into it, found the demand to be just and ordered the payment to be enforced." Thereupon the said Chakravarti collusively sent his nephew to Calcutta, and procured himself to be brought down from the country by a warrant and thus evaded the payment of the balance. The Dewan goes on to say that this incident produced great confusion in the mofussil.[1] But we think that it is not necessary to pursue the Dewan's narrative any further, as all these cases stand on his testimony alone and as he was himself in arrears to the Government, it may very well be that he exaggerated matters in order to justify his own remissness. We would therefore close this aspect of the question by referring to two other cases which stand on stronger documentary evidence.

The first arose in connection with the zamindary of Hatinda. Dharanidhar

1 General Appendix, 26.

Roy, Zaminder of Hatinda, died and the Governor-General and Council resolved to let the zamindary to farm. This, the Zamindar's cousin Jagannath and his second wife attempted to frustrate. It appears that Jagannath tried to create all sorts of difficulties and as a result the Provincial Council ordered his removal to Murshidabad. But in the meantime Brajeswari[1], the said wife of the Zamindar, took her residence at Chinsurah, which, as is well-known, was under foreign jurisdiction, and instituted a vexatious suit against Shyam Roy, the Naib of the pargana, in the Supreme Court, as a consequence of which the Naib was detained in Calcutta, and, in his absence, no settlement could be made. The Company was thus subjected to a material injury. When Brajeswari saw that all this could not stop the letting of the zamindary to farm, for which an advertisement had already

1 In the records the name is variously spelt as Beyesser, Bergissery, Bridgo Sevree. I think that the real name was very probably Brajeswari.

been issued, and that her rights to the zamindary would not be entertained, she applied to the Supreme Court for a Letter of Administration. The application was, no doubt, rejected but, as the Murshidabad Council say, this case very clearly illustrates "the progress of the Zamindars' idea of the Supreme Court and the use they make of it".[1]

The other case, though not concerned with any Zamindar or zamindary, and is thus, in a sense, irrelevant, yet very clearly exemplifies the point we have been discussing and we think no apology is needed for its inclusion here. It appears that several Shroffs connected with the Rungpur Treasury, "who were the principals in the whole business of the revenue during the term they were employed to receive it from the Zamindars, and deliver *pauts*[2] and sealed bags into the Treasury", found themselves in arrears and before the bags could be

1 General Appendix, 27.

2 Pauts or pats probably means gold and silver bars.

opened and the deficiency detected, had themselves arrested through a warrant collusively taken from the Supreme Court and were removed to Calcutta. On receipt of this information the Governor-General and Council ordered that the said Shroffs should be immediately apprehended and sent back to Rungpur. Accordingly these persons were arrested and confined in the Khalsa by the Ray Royan. But immediately afterwards the Chief of Rungpur and two of his officers were served with a Writ of Habeas Corpus, to which an immediate return was called for, unless the persons confined were admitted to bail or suffered to go at large under charge of peons. The Shroffs had consequently to be released under the charge of peons. In the meantime their bags were opened at Rungpur and it was found that they were liable to the Government to the extent of Rs. 1,76,789. But in order to have an excuse to continue in Calcutta two of the Shroffs instituted a suit against Broja Roy, the servant of Mr. Purling, the Chief of

Rungpur and in the meanwhile secretly removed most of their effects to Chinsurah, so that when, in accordance with the orders of the Governor-General and Council, their effects at Rungpur were seized, they were found to be very inconsiderable. After the termination of the suit against Broja Roy, it seems that the Shroffs were arrested and brought to Rungpur and the opinion of the Advocate General was sought as to the means to be taken for the recovery of the sums due from those people. Nothing further appears in the records but this case illustrates very clearly as to how the Supreme Court, which was the highest repository of justice, was itself being used to defeat the ends of justice.

We would now pass on to another type of cases which would show as to how the difficulties of the already acute situation were further augmented by the tricks of dishonest lawyers. In their letter to the Honourable the Court of Directors, dated the 25th January, 1780, the Governor-General

and Council categorically make this complaint. They write: "It is true, that the sense of the Court respecting the exemption of one certain class of men from its jurisdiction, has been frequently declared in loose and extrajudicial intimations; and perhaps we may ascribe to these very intimations, that the right itself has never yet been brought to a decision; for we believe, that in every instance in which it has been made, the Plaintiff has been advised by his Attorney to drop the suit. The Defendant's Attorney having a common and professional interest to prevent the decision, which would establish a precedent to disadvantage, has acquiesced; and his client, glad at any rate to be freed from the vexations and expenses already incurred, has submitted to the deception, and returned to his own house; whence, after a short interval of quiet, he has been again dragged by a new writ to Calcutta, to go through the same process, with the same termination; and this perhaps, repeated till he has purchased the forbearance

of his prosecutor. Lest you should suspect this picture to be overcharged, we beg leave to refer you to the case of the zamindar of Pawa Colly."[1] And the details of the case, so far as they appear in the Report, leave little doubt as to the genuineness of the complaint.

It appears that one Amanullah claimed some lands, situated in the pargana of Pawa Colly but the Zamindar denied his right. An affray ensued between the two parties, in which one man was killed. The officers of the Faujdary Court enquired into the circumstances and as it appeared to them that both the Zamindar Hari Singh and Amanullah were, in some measure, culpable, they ordered both of them into confinement. After some time both were released and thereupon Amanullah preferred another complaint in which he set forth that Hari Singh had murdered his wife's brother. In consequence of this accusation, the officers of the Faujdary Court were directed to conduct the Zamindar to Murshidabad that

1 General Appendix, 13.

he might be tried before the Nawab ; but on the road thither, they were met by a European bailiff, who took the prisoner from them and carried him to Calcutta, Amanullah having, in the meantime, instituted a suit against him for debt in the Supreme Court. The Zamindar was confined in the gaol for a considerable time but was at last allowed to return to Purnea. He was again put into confinement by the Faujdary officers, but soon after, another European, with a warrant, came to Purnea and hearing that Hari Singh was confined in prison, the Serjeant went there at night. A guard was at the door but the Serjeant forced his way in, and began to examine the prisoners. In the confusion Hari Singh escaped and hid himself in some neighbouring huts for a few days. But when he heard that the peons of the Court had gone to his house in the country and were troubling his family, he surrendered himself to the bailiff. On this occasion the Provincial Council of Dinajpur wrote to the Governor-General about the affair

and, under their instructions, advised the Zamindar to apply to Mr. Naylor, the Company's Attorney, and to produce evidence to prove that he was independent of the jurisdiction of the Supreme Court. But the plaintiff dropped the prosecution and the Zamindar again returned to Purnea. But a few months afterwards, another warrant, on the same complaint as before, was issued against the Zamindar and he was carried to Calcutta for the third time. This time, too, he had to remain for a considerable time in gaol and was ultimately released.[1] The contention of the Governor-General and Council is thus materially substantiated and the case also shows as to how the interference of the Supreme Court was creating confusion in the criminal administration of the country.

In this connection we would also refer to the case of Gulam Nubby, which the Dacca Council characterised as "exceedingly cruel", and which, in their opinion, deserved the sympathetic consideration of the Government.

1 Report, p. 67.

Gulam Nubby was an inhabitant of Dacca and appears to have been a man of some opulence. He bore a very good character and had a reputation for honesty and integrity in his native place. But as ill luck would have it, he became involved in certain processes connected with the Supreme Court, which practically ruined him and, what was worse, "destroyed his credit and brought disgrace on himself and his family." It appears from the petition submitted by Gulam Nubby to the Dacca Council that he had been the malzamin or security for the Zamindars of Cherulia and Muddadea parganas. The Zamindars fell into arrears and Gulam Nubby had to pay the *kists* as they fell due for sometime. But as no money was still forthcoming from the Zamindars, Gulam Nubby applied to the Dacca Council for relief. The Council repeatedly sent peons and sepoys to the mahals but to no purpose. At length they ordered that "if the Zemindars or their agents did not appear at the Sudder in 20 days, and discharge the

debt due to Government and Gulam Nubby, their parganas should be disposed of by public outcry." As the Zamindars had no money with which to discharge their obligations, they approached Gulam Nubby and earnestly requested him to save them from this unfortunate predicament. The result was that Gulam Nubby took the parganas into his own hands and accepted a *Kistbundee* from the Zamindars. At the same time Gulam Nubby delivered to the Council a *Rauzenama* and *Kistbundee* from the Zamindars "wherein they bound themselves, that if they paid not their debts agreeably thereto, they were willing their lands should be publicly sold by auction."

Gulam Nubby thereafter sent a Sikdar to the mahals to expedite collections but matters did not improve. At this two of the Zamindars suggested to Gulam Nubby that if he would put them under confinement, an impression might be created and money might be forthcoming from the parganas. This was accordingly done in as

lenient a manner as possible but to no purpose. Gulam Nubby himself paid two or three *Kists*, as they fell due, and then applied to the Council that their previous decision might be given effect to. The request was granted, the parganas were sold by public auction, and out of the proceeds the dues to Gulam Nubby and the Government were discharged.

Then began the misfortunes of Gulam Nubby. The Zamindars sued him in the Supreme Court for debt to the amount of Rs. 23,000, Gulam Nubby was arrested in the public streets of Dacca and, in order to escape imprisonment, had to furnish bail to the enormous amount of Rs. 60,000. The suit was dismissed with costs but Gulam Nubby failed to recover a single rupee, though the case had cost him about Rs. 2000. But soon afterwards two of the Zamindars sued Gulam Nubby again for false imprisonment and as a result four warrants and eleven summons were issued out against him. And to complete his misfortune, the

same Attornies, who had been employed by him in the previous cases and to whom therefore he had confided all his secrets, were now engaged to conduct the prosecution against him. His own Attornies, on the other hand, acted quite negligently and did not send the subpoenas for his witnesses till within a short time of the trial and thus deprived him of the benefit of their testimonies. The result was that the Plaintiffs were awarded damages of Rs. 8,400 with costs.

But the matter did not end here. A second suit for false imprisonment was brought by two others of the Zamindars, one of whom, Gulam Nubby swore, he had never seen in his life. This time, too, the Court decreed damages to the amount of Rs. 8000 and Gulam Nubby was faced with stark ruin. He apprehended that other suits also might be brought against him by the Zamindars and their numerous servants, particularly as they sued as paupers and could thus carry on suits at no expense, and

humbly sought the protection of the Government. In recommending his prayer to the Governor-General and Council, the Dacca Council observe: "The Zemindars and their servants by entering various complaints against him in the Court of Judicature, for flogging and confinement, have already subjected him to an expense of between thirty and forty thousand rupees—There are at present no more suits against him in the Court, but it is said that others are preparing, and it is not likely that Zemindars, being encouraged by lawyers, and saved all expenses by suing as paupers, will ever let him rest, particularly as they are ignorant people, and therefore made to believe that they shall recover their pergunnahs by means of prosecuting Gulam Nubby".[1]

1. General Appendix, 19.

Gulam Nubby was apparently regarded as subject to the jurisdiction of the Court because he was a 'farmer' of revenues. In connection with the Patna Case, the Judges in their judgment on Bahadur Beg's plea to the jurisdiction had affirmed the Court's jurisdiction over the farmers. The dread in which the Supreme Court was held would be evident from the fact that immediately about 40 farmers prayed to be relieved of their charges.

It will thus be seen that the lawyers, too, or at least a section among them, were, by their dishonesty and professional tricks, bringing the Supreme Court into disrepute, and the same may also be said about some of the Court's officers, particularly the bailiffs and the peons who accompained them. The complaint was, more or less, persistent that the Sheriff's officers almost invariably acted with arrogance and unnecessary harshness and often even with brutality. They almost always assumed an air of superior authority in their dealings with the servants of the Government in the mofussil and soon came to be regarded by the public in general as a curse and a nuisance. This picture may very well be somewhat overdrawn but that there was material ground for these allegations is clearly shown by several well-authenticated cases. Typical in this respect is the case of Mirza Juan who was the Zamindar of the pargana of Dakshin Shahbazpur. It appears that one Abraham sued Mirza Juan in the Supreme Court and

had a decree passed against him, possibly, as the Dacca Chief surmised, through non-appearance, as Mirza Juan was not subject to the jurisdiction of the Supreme Court. However, a Gomastha of the said Abraham, together with a bailiff and several peons, arrived at Dacca with the purpose of executing the warrant. It appears that at that time Mirza Juan was absent from Dacca, touring in his mahals, and consequently the warrant could not be served.

Next, we are told by the Chief of the Dacca Council that the bailiff came to him, showed him the Execution from the Sheriff and informed him that he (the bailiff) and his peons had arrested Mirza Juan but that the latter was subsequently rescued. The bailiff, therefore, asked, in the name of the Supreme Court, the Chief's assistance in restoring his prisoner to him. On the other hand, the Vakeel of Mirza Juan also ıppeared before the Chief and submitted a epresentation, attested by several respect-ble persons of the locality, in which he

alleged that about 11 o' clock in the forenoon on Monday, a Gomastha of Mr. Abraham, with a bailiff and peons, came to the house of Mirza Juan and peremptorily asked him to come out. At this the Durwan informed them that the Mirza was not at home. "Some time after which, the abovenamed began creating a disturbance; therefore the people at the entrance shut the door. The bailiffs, by strokes with clubs broke it open, and beat the people that were there, and went into the Zenana apartment of the house, but did not find the above Mirza; the bailiff however wounded a slave girl with a sword. They seized Saühel Jaun and Muaun Ghansoo, the sons of Cojah Ryauzeullah, who came to see what was the matter, beat and disgraced them and carried them on board of his boat and confined them. In the disturbance a silver, beetle box, etc, effects were carried away out of the said Mirza's Zenana apartment". The Chief was satisfied that the alleged arrest had never been made as Mirza

Juan was really away but he asked the Sheriff's officer to wait and in the meanwhile sent a message to the Mirza asking him to hasten to Dacca, so that on his arrival the matter might be settled.

It is clear that the bailiff was entirely in the wrong and that he had invented the story of the arrest and release in order to hide his own irregularities. Nevertheless, he had the effrontery to complain to the Sheriff that the Dacca Chief had refused to give him the assistance he required. Thereupon the Sheriff wrote to the Chief, peremptorily demanding the required assistance and threatening dire consequences in case of negligence. The Dacca Council thought that it was time that the Governor-General and Council were informed of the matter and wrote to them, asking for instructions. The latter referred the case to the Advocate General who opined: "The arrest upon which the Sheriff and his officer found their complaint of a rescue,.....does not appear to have in fact been ever made.....It stands

upon the single assertion of the officer, who was armed with the process of the Court, and is combated by a cloud of evidence, whose testimony not only destroys his credit upon the main charge, but proves him to have offered unwarrantable and wanton outrage. .....As the Law will not suppose opposition to its process, it has not provided an extraordinary means for its execution ; nor has the officer appointed to execute it, any claim to the assistance of Government till he finds himself opposed ; nor should such demand, if made, be attended to". The Advocate General concluded by stating that though, no doubt, it was the duty of everybody to discourage and repress every attempt to weaken or oppose the processes of the Law, he saw no reason why the Dacca Council, or any other subordinate body, or even the Supreme Council itself, should go out of their way and send for, and deliver to an officer, charged with the execution of civil process, the object of that process. The Dacca Council was accordingly instructed to

discharge Mirza Juan, if he had not already been surrendered to the Sheriff's officer. If, on the other hand, Mirza Juan had not yet arrived at Dacca, the Council were to revoke all orders which they had previously passed to compel his attendance.[1]

This case of Mirza Juan thus leaves little room for doubt that the complaint on the score of the brutality of the bailiffs was grounded in fact and cannot be summarily dismissed as a mere matter of prejudice.[2] We have already referred to the case of Raja Indra Narayan of Tumlook and another glaring instance is furnished by the affair of Laksminarayan Kanungo.[3] The details are of the usual sort and we need not bother about them.

One other matter and we close this review of the cases. There are several instances where writs of the Supreme Court were issued against ladies of rank and created

1 General Appendix, 20.
2 Stephen, *op. cit.*, Vol II, p, 145.
3 General Appendix, 16.

something like consternation among the people. One such was the case of Jay Durga Chaudhurani, the Zamindar of Bamingdanga[1] and another, that of Rani Bhawani, of revered memory, who was the Zamindar of Rajshahi in her own rights. The Governor-General and Council naturally took a very serious view of the last case and in their letter to the Court of Directors, dated the 25th January, 1780, wrote thus about the matter : "With wonder and alarm we have recently seen the mandatory process of the Court directed to a woman of the highest caste and rank, the Ranee of Rajeshahee, who possesses in her own right, the first great Zemindary of these provinces. You will permit us to draw your attention for a moment to the certain consequences of this proceeding, if that management had not been employed to avoid them, which we cannot hope will always succeed. Secluded as women of her superior rank are, and equally ignorant of the language and purpose of the

1 General Appendix, 22.

process, it were to a certainty disobeyed. The Court adhering to its rules, a capias follows, the execution of which is probably committed to a band of armed ruffians ; her house is pillaged ; her temples polluted, the most secret recesses of her family violated." [1] That none of these things happened was due to the fact that the plaintiff had been persuaded to withdraw his action. Mr. Baber, who was at one time Chief of the Murshidabad Council, stated in his evidence that if an attempt had been made to serve on her a personal process by a Serjeant of the Supreme Court, he believed that her people would have certainly resisted it, as much as an attempt upon her life[2]. The situation was saved by the tact of the Governor-General but the case shows how the processes of the Supreme Court were creating, at almost every step, unnecessary difficulties for the Government of the country. It appears, moreover, that

1 General Appendix, 13.

2 Edward Baber's Evidence ; Report, p. 45.

this was not the only case in which the said Rani Bhawani became involved in processes from the Supreme Court. Paramanada Das, Vakeel of the Rani, writes: "My principal, Maharani Bhavani, Zemindar of Rajeshahy etc……is subject to the King of Indostan, and is in no wise dependent on the authority of the Supreme Court. She has passed her whole life-time in the Mahl Saraye, and never has transaction in business with any one. Shut up in her house, she has applied, with her officers and servants, to the discharge of the revenue. Several persons, under claim of old debts, etc., have now procured summonses against her from the Supreme Court, and others are preparing to follow their example.—At the same time, when her gomasthas offer to press payment from the renters, the latter frequently apply to the Supreme Court, and procure warrants, summonses, and Attornies' chits, to be issued to them, and great confusion is occasioned thereby in the mofussil, as well as obstruc-

tions in the collections, and the cultivation of the country."[1] Nothing further appears in the records and it seems that these cases, too, were tactfully "managed."

The picture that emerges out of the foregoing review, as the reader must have seen for himself, is one of utter confusion, conflict of authority, the Attornies of the Supreme Court harassing and intimidating people as they liked, and the processes of the law itself undermining law and order. The spectacle of a prisoner in the hands of the officers of the law being forcibly taken away by another set of such officers, or that of a Serjeant of the Supreme Court overpowering the guard of a country gaol and forcibly entering the precincts in search of a prisoner, was anything but edifying and must have produced a total confusion in the minds of the people as to whom to obey. It requires no imagination to perceive that the Court, in many respects, particularly with regard to the administration of the

1 General Appendix, 25.

revenues, was becoming a clog on the Government and indeed, several persons of sound judgment and of long Indian experience actually maintained that if something was not done to remedy the situation, a catastrophe was imminent. As Mr. Rous puts it :

"The process is abused to terrify the people ; frequent arrests made for the same cause ; and there is an instance of the purchaser of a Zemindary near Dacca, who was ruined by suits commenced by paupers, suits derived from claims prior to his purchase, and who was at last condemned in considerable damages for an ordinary act of authority in his station. Hence the natives of all ranks become fearful to act in the collection of the revenues. The renters, and even hereditary Zemindars, are drawn away, or arrested at the time of the collections, and the crops embezzled. If a farm is sold, on default of payment, the new farmer is sued, ruined, and disgraced. Ejectments are brought, for land decreed in the Dewannee

Adaulat. A Talookdar is ruined by the expense of pleading to the jurisdiction, though he prevails. And, in an action, where 400 rupees were recovered, the costs exceeded 1600 rupees. When to these abuses, incident to the institution of the Court itself, and derived from distance, and the invincible ignorance of the natives respecting the laws and practice of the Court, we add the disgrace brought on the higher orders, it will not, perhaps, be rash to affirm, that confusion in the provinces, and a prodigious loss of revenue, must be the inevitable consequence of upholding this jurisdiction."[1]

Impey, no doubt, claims that "the institution of the Supreme Court is felt as well as professed to be a blessing to the innocent inhabitants of this Settlement and country" and that the "Judges felt great satisfaction in receiving what they knew to be the united testimony of the opinion of the Settlement,

1 Quoted by Mill, *History of British India*, vol. iv, p. 336.

with regard to the equity and justice of their proceedings", but it is not difficult to see that the truth must have been quite the reverse. There can be little doubt that the people in general, particularly of the country-side, dreaded nothing more than the processes of the Supreme Court and its officers.[1] And further, whatever Sir James Stephen might say,[2] there are good grounds for

1 In his evidence before Touchet's Committee Mr. Law stated that he believed that the natives dreaded nothing more than the jurisdiction of the Supreme Court. They did not understand the principles upon which the English Court acted and as far as they had any knowledge of the English law, they found it totally repugnant to their manners, religion and customs. Mr. Law believed that they were better contented with their Country Courts, with all their imperfections, than with the prospect of anything beneficial that they might find by resorting to the English Court. (Report, p. 18.)

2 Stephen writes: "When a person is wrongfully arrested and imprisoned he does not usually describe with justice the proceedings of the wrong-doer. Every illegal touch becomes a brutal aggravated assault inflicted with a malicious pleasure in the triumph of might over right. Every prison becomes a loathsome dungeon. In nearly every account of the matter in question it is stated that the prisoners were 'dragged down to Calcutta', whereas, in fact they seem to have been generally taken in boats." Stephen also thinks that the complaint made in several cases about the violation of the zenana was "a kind of pleader's flourish, like the 'assaulted and beat' etc of the old fashioned English special pleading." (*op. cit., vol. II, pp, 145, 150.*) But as we have seen, the matter cannot be explained away in this manner. It is curious that Stephen should think that by 'dragged' anybody meant dragging in the physical sense. All that was implied was that they were forcibly brought to Calcutta.

believing that the Sheriff's officers, by their brutality and arrogance, had made the Supreme Court an object of terror and detestation.

But the most curious thing is that most of this could easily have been avoided if only the Judges had acted a little more reasonably and a little more wisely. Sir James Stephen, the redoubtable apologist for the Supreme Court, admits that the arrest on mesne process was a serious grievance. He writes: "The effect of it was that on an affidavit sworn behind his back, a man might be arrested at Dacca, for instance, and brought to Calcutta, there to be imprisoned at a distance of many hundred miles from his home, unless he could give bail for an action perhaps unjustly brought against him. Even if he pleaded to the jurisdiction, and his plea was allowed, he was put to much inconvenience, and, at all events, he had to employ at a great expense English attorneys and counsel."[1]

1 Stephen, *op. cit.*, vol. II, p. 145. Mr. Hickey, in his evidence, states that fees to the Counsel were three times as much as that in England. He further states that the bail demanded was generally double the amount of the debt. It was easy for

Sir James Stephen regards the introduction of this law to India as indefensible, blames the authors of the Charter for the same, grudgingly concedes that "some blame attaches to the Court for not having framed rules which would have prevented these abuses" and which the Charter empowered them to do, and then hastily proceeds from what he considers a 'topic of prejudice' to a discussion of "the legal merits of the dispute between the Court and the Council." In fact, it seems to us that Sir James Stephen sidetracks the real issue, though "an air of impartiality is sought sedulously to be maintained."

The crucial point is that not 'some blame' but the whole blame attached to the Court. In his letter to Lord Weymouth, dated the 12th March, 1780, Impey writes: "The Court does not, nor ever did, claim any jurisdiction over Zamindars, but that their

an inhabitant of Calcutta to obtain bail, provided he had money but for people coming from a distance it was different. They had no other alternative but to hire bail, and many were committed to gaol for want of bail. (Report, pp. 70, 71.) See also Farrer's Evidence. (Report, p. 72).

character of Zemindars will not exempt them from the jurisdiction of the Court if they be employed or be directly or indirectly in the service of the East India Company or any other British subject."[1] This is confirmed by Mr. Bogle, the Commissioner of Law Suits, in his Report on the case of the Zamindars of Fateh Singh. Mr. Bogle says: "Since the establishment of the Supreme Court, no question has been agitated before it, which could bring rights of Zemindars to a discussion. Many suits indeed have been commenced against them, but they have always pleaded to the jurisdiction; and, except when their cause happened to be managed by an unskilful Attorney, their plea has always been sustained. They have been considered as landholders, possessed of extensive territories, paying a certain land tax or assessment to Government."[2] We may take it therefore that the Court almost uniformly held that the Zamindars, as such,

1 Cossijurah Appendix, 25.

2 General Appendix, 12.

were not subject to its jurisdiction ; yet on an affidavit which simply stated that the person sued against was a Zamindar and employed in the collection of the revenues, a writ almost invariably issued, whether the person making the affidavit was a man of credit or not, forming no part of the question.[1]

The Court's view with regard to this assumption of temporary juristiction over persons whom the law declared to be wholly exempt from it, is thus recorded by the Governor-General and Council : "We knew not indeed in what way to reconcile a temporary jurisdiction by law over persons, whom the law declared to be wholly exempt from it ; but were told, that the allowed jurisdiction could not be effectual without it ; since, if the Act of Parliament was to be taken in its literal construction, and the Court were not allowed to exercise jurisdiction, but over those whose subjection to it had been previously ascertained, it could exercise jurisdiction over

1 Report, p. 19.

none ; because unless it could compel persons, who were affirmed to be objects of its jurisdiction, to appear before it, the question of their subjection to it, or of their exemption from it, could not be previously ascertained ; and the Act itself, which gave them jurisdiction in certain cases, and over certain characters, would be nugatory."[1] Even if this be conceded, which is perhaps conceding too much, the Court's remissness in modifying the procedure they had adopted, even when they saw before their very eyes, times without number, the terrible distress to which it was leading, can, in no way, be justified. The Governor-General and Council write : "With respect to the right of the Court, derived from the necessity of a temporary jurisdiction over persons whom the law has excluded from it, we presume to doubt both the necessity and the right dependant on it. If instead of receiving the ready Affidavits, declaring persons to be objects to their jurisdiction, the Judges had made it

1 General Appendix, 13.

their practice to examine the grounds of such declarations, it would have been easy for them, in any case, to have ascertained, whether or not, they were comformable to the sense of the Charter ; or if a doubt had still remained in their minds, it might easily have been resolved by an application to us, to be informed whether the defendant, in a particular action, was or was not in our particular employ."[1] Reason, humanity, and common sense would alike have dictated some such procedure, but the Court would have none of it. Even cases like that of Ayodharam and Subharam or of Hari Singh left them unmoved, and yet Sir James Stephen would say : "The Supreme Court was in fact the representative of ill-instructed English philanthropy, which was checked in its career only by the force of misrepresentations against its agent."[2]

It thus becomes necessary to enquire as to what might have been the motive of the

1 General Appendix, 13.

2 Stephen, *op. cit.*, vol. II, p. 161.

Court to persistently follow their original procedure inspite of the fact that it led, to their own immediate knowledge, to palpable injustice and hardship. Mill categorically states : "The motive in this case cannot be mistaken ..... It was not any conception of good : It was not ignorance of the evil ; for it was too obvious to be misunderstood. It was the appetite for power, and the appetite for profit : the power sufficiently visible and extraordinary ; the profit more concealed." Mill goes on to say that the British legislature had no doubt cut off the Judges from any direct share in the fees but "they did not cut off an indirect profit of no trifling importance, by allowing them to create offices, with emoluments derived from fees ; offices of which they enjoyed the patronage, itself a valuable power, and of which they could not fail to discover various ways of disposing for their own advantage." He then quotes a passage from a letter of Impey to Lord Weymouth in which the Chief Justice deplores that, as

a consequence of the action taken in the Kasijora case by the Council, the business of the Court had fallen off nearly by one-third and that when the pending cases were disposed of the Court would only have a few Calcutta causes to try. Impey adds: "The advocates, attorneys, and officers of the Court who have not already succeeded, will be reduced to a most deplorable situation." Mill comments that Impey's candour is amusing.[1]

It is, however, preposterous to suggest that the entire dispute with the Council was the result of corrupt motives on the part of the Judges and to ignore completely several important factors that were constantly at work. As we have seen, the Act itself was, by no means, clear with regard to the very vital question of jurisdiction which they were called upon to exercise. Further, as Wilson points out, the fact that they were English lawyers, sent to administer English law, and educated in a belief of its compre-

1 Mill, *op. cit.*, vol. IV, pp. 342, 343.

hensiveness and perfection, and the conviction with which they started, viz., that gross abuses of law and justice prevailed in India, must have been responsible, to a large extent, for the exaggerated notion of their own importance and an equal contempt for the Company's functionaries. On the other hand, the Company's officers looked upon the Court's interference with an extreme touchiness, the result, more or less, of their habitual use of arbitrary power, which was receiving, for the first time, an unwonted and often wholesome check. The question is thus one of great complexity and we should be careful to give the psychological factors the importance they deserve. Moreover, it should be borne in mind that a single verdict on the question of the dispute between the Court and the Council, which comprised of distinct and separate issues, is bound to be misleading.

We would, therefore, treat this question of the processes on the Zamindars and the arrests on "mesne process" as a separate

issue and enquire as to whether Mill's charges have any basis in fact. There cannot be any doubt that the main source of the Court's business arose out of this assumption of temporary jurisdiction over the Zamindars and that, without it, the Court's influence and authority would practically have been limited to the city of Calcutta, as it actually became after the Kasijora Case. Without it most of the Attornies of the Supreme Court and its numerous dependents of various sorts, who were all having a merry time of it, would have been reduced to penury and ruin. This is a very important fact, and although the charges of Mill are, no doubt, very serious and appear rather improbable, they may not be wholly groundless because the reluctance of the Court to amend their procedure even when it was leading to wholesale abuse is understandable only on some such supposition. The Court's toleration and even indulgence of fraudulent lawyers who instituted and dropped suits whenever it suited their convenience, brought

the same matter before the Court again, and even when guilty of the grossest irregularities received the support and even encouragement of the Judges,[1] naturally raise a suspicion that the Court was not always guided by strictly judicial considerations. In his letter to Lord Weymouth, dated the 2nd March, 1780, Impey writes: "If an affidavit, that the defendant is an object of the jurisdiction, and specifying in what manner he becomes so, 'is not a sufficient barrier against injury', I must plead my inability to contrive a better; and if a better had been suggested by the Advocate General or the Governor-General and Council, I should most readily have adopted (it)."[2] That the device of an affidavit did not prove 'a sufficient barrier against injury', Impey must have seen for himself times without number, unless he was wholly impervious to all good sense and feeling. What the Council's suggestion was we have already

1 Dacca Appendix, 7; Hyde's Letter to Captain Cowe.
2 Cossijurah Appendix, 26.

noted[1] and although we do not presume to say anything with regard to the law or the legal difficulties of the matter, we refuse to believe that something could not have been done.

And again, so far as Impey is concerned, there is evidence to show that he was not above misusing his powers and position to serve his private ends. He had brought with him from England a cousin named Fraser, whom Francis calls "a low, obscure fellow, who had not long ago been the mate of a ship, a wretch of the lowest order, a creature and distant relation of Impey". It might have been unsafe to rely on the testimony of Francis but this description of Fraser is substantially borne out by an affidavit which Fraser himself swore before Mr. Justice Hyde on the 16th August, 1782. Very soon after the institution of the Supreme Court this Fraser was appointed Sealer of the said Court on a salary of Rs. 2000 per year. Then in December, 1776, he was appointed,

1 *Supra*, p. 125.

in addition, an Examiner in the said Court on a salary of Rs. 6,000 per annum. It is further on record that in 1778, Impey secured for him a contract for repairing the *puls* of the district of Burdwan for 1,80,000 rupees, whereas in the two previous years the repairs had been arranged for, for 25,000 rupees. The common notion in Calcutta was that the real contractor was Impey, who thereafter earned the sobriquet of Justice Pulbandi (the keeping bridges or embankments in repair).[1]

The matter is rather unpleasant and we do not intend to pursue it further. However, there is evidence to show that the Court was anxious that its business should increase and sometimes took questionable and even illegal steps for the purpose. A case in point is that of Mr. Peat, an Attorney of the Court, who took up his residence at Dacca and remained there for some time. It seems that the Governor-General and Council had objected against the sending of a European

1 Beveridge, *Trial of Nanda Kumar*, pp. 116, 117.

into the provinces conformable to the established rules, but the Judges asserted their right to send Attornies into any parts where their jurisdiction extended. [1] We shall have occasion later on to discuss in detail the activities of Mr. Peat at Dacca and say something about the ways he assiduously pursued in order to increase the business of the Court. It will be enough for our purposes here to point out that besides being an Attorney of the Supreme Court, Mr. Peat was also a Master Exaraordinary in that Court for the purpose of taking affidavits, upon which writs of Capias were issued, and these were afterwards executed by him and his servants, in the quality of Deputy Sheriff. Such a combination of functions was not only dangerous but even illegal. Mr. Peat issues an Attorney's *chit*, and if it fails to produce the desired result, he takes an affidavit, sends it to Calcutta, has a warrant issued, and then himself serves it. And the Company's Standing Counsels, Messrs. Newman

1 Evidence of Boughton Rouse, Report, p. 28.

and Lawrence, were definitely of opinion that all this was clearly illegal. The combining the functions of an Attorney and a Sheriff's officer was "not only incompatible and against the rules of practice in all Courts, but in direct violation of an Act of Parliament, made in the reign of Henry V, declaring that a Sheriff's Officer shall not be an Attorney." It will thus be seen that the actions of the Judges were not always of an unimpeachable character and it would be idle to pretend that all these were due to "the novelty of their position, and their consequent ignorance of their relative and absolute duties." We therefore think that Mill's charge may not after all be baseless and those who know anything of the part patronarge and corruption played in English public life of the eighteenth century, will not consider it impossible or even improbable.

Sir James Stephen, as usual, comes valiantly to the rescue of Impey and his colleagues. He regards Impey's complaint about the falling off of the business of the

Court as merely "injudicious" and goes on to say: "His enemies have laid hold of these expressions to say or suggest that the Court, in their contest with the Council, were actuated by corrupt motives, the wish of getting business and so power and patronage. For my own part, I do not see that their conduct was indirect or improper, though I think the Regulating Act had imposed inconvenient duties upon them. I dare say that Impey did wish his Court to have a good deal of business, though it made no difference to the judges, who were paid not by fees but by salaries; and though Impey truly remarks in his correspondence, 'the less my jurisdiction the greater my ease,' I do not know why Impey should be willing to commit all sorts of crimes in order to have the privilege of disentangling such masses of perjury, confusion, and hopless bewilderment as are to be found, for instance, in the Patna Cause."[1]

1 Stephen, *op. cit.*, vol. ii, pp. 219, 220.

It will be seen that Sir James Stephen brings in here the whole dispute between the Court and the Council, though he makes his remarks in connection with the Kasijora Case. We find it necesarry to insist that his question of the processes on the Zamindars should be considered separately on its merits, for otherwise, there is a chance of the real issues being clouded. As for instance, in the passage quoted above, Sir James Stephen brings in the question of 'disentangling masses of perjury, confusion and hopeless bewilderment' and refers to the Patna Case. But this can have no bearing on the question of the Zamindars where the processes were issued on the taking of a simple affidavit and the plea to the jurisdiction was also generally allowed after a mere formality had been gone through. These cases could not have much interfered with "the ease" of which Impey speaks. Further, the fact that the judges received fixed salaries does not affect the main charge which speaks of the increase of power and

patronage of the Court through the increase in business. We do not think it necessary to pursue the matter further but would leave it to the reader to judge, which of the two views, Mill's or Stephen's, is more in accordance with the facts and the probabilities of the case.

CHAPTER III

The Supreme Court and the Nizamat

The position of the Company in the three provinces during the first decade after the battle of Plassey was anomalous in the extreme and this was due to the deliberate policy of the Court of Directors to hide their real power under the shadow and semblance of the Nawab's authority. Opinions differ as to the effects of the battle of Plassey. Some, no doubt, think that it laid the foundations of the British power in India and made the Company the arbiter of the destinies of Bengal, but there are others who would regard Plassey as having effected a mere palace revolution, the only gain to the Company being the indemnification for its losses and the substitution of a favourable for an unfavourable Nawab. The treaty with Mir Jafar does, by no means, show that the Nawab had resigned any of his sovereign

powers to the Company[1] and it is interesting to note that "seven months after the battle of Plassey, the Naib Faujdar at Hughli had placed a guard round the Company's old factory at that place, and theatened to cut down the English colours." [2]

But in two important respects the battle of Plassey effected a remarkable advance in the position of the English in Bengal. In the first place, it gave them a tremendous prestige, though the battle itself "cannot rank as a great military achievement." Secondly, the clause in the treaty with Mir Jafar wherein it was arranged that whenever

1 Only Article 11 of the Treaty by which the Nawab agreed that he would not erect any new fortifications below Hugli, near the river Ganges, might be construed as having effected, to some extent, an abrogation of the absolute sovereignty of the Nawab. With regard to Calcutta itself it is important to note that, though the Supreme Court, in a case that came before it, determined that "the inhabitants of this town (Calcutta) are all British subjects, because this town was conquered by Admiral Watson and Colonel Clive, but that does not extend to subordinate factories," the Company never claimed the right of military conquest but "sought and obtained a *Sanad* from the Nawab for the free tenure of their capital." (Firmingar, *op. cit.*, p. iii) For the treaty with Mir Jafar, see Aitchison's *Treaties etc.*, vol. 1., pp. 11, 12.

2 Long's Selections from the unpublished records of Government, No. 3.

the Nawab would demand English assistance he would be at the charge of the maintenance of them, proved in the long run to be of very great advantage to the Company. Mir Jafar soon found that he had purchased the *masnad* of Bengal at too high a price and financial difficulty became the rock on which his ship of state foundered. His payments to his army became irregular and fell into arrears with the result that it became mutinous and could not be relied on at moments of crisis. His three years' reign, on the other hand, was beset with difficulties in almost all directions. There was a rebellion at Dacca, another at Purnea, the Marathas renewed their incursions and at last the Shahzada came with an army to recover Bengal. The result was that Mir Jafar was compelled to requisition the Company's army almost constantly, thus practically maintaining it at his own expense.

This somewhat irregular dependence of the Nawab on the Company's army was put on a permanent footing by the treaty that

was concluded between Mir Kashim and the Company on the 27th of September, 1760. Articles 4 and 5 of the Treaty thus state the position: "The Europeans and Telingas of the English Army shall be ready to assist the Nawab, Mir Mahomed Kasim Khan Bahadur, in the management of all affairs; and in all affairs dependent on him, they shall exert themselves to the utmost of their abilities. For all charges of the Company and of the said Army, and provisions for the field, etc., the lands of Burdwan, Midnapur, and Chittagong shall be assigned, and *Sanads* for that purpose shall be written and granted. The Company is to stand all losses, and receive all the profits of these three countries."[1] This treaty, which enabled the English to consolidate their military strength and gave them a direct hold over three of the districts, marks a further stage in the growth of their power, but it would be a mistake to suppose that the Nawab had, in any way, ceased to wield the sovereign authority. The very facts that

1 Aitchison, *op. cit.*, vol. I, pp. 47, 48.

he could, when he so desired, remove his capital to Monghyr without any reference to the Company, could train his army on the European model under French officers and, when the occasion arose, fight on equal terms with the English, unmistakably show that he was both the *de jure* and *de facto* sovereign of the territories over which he ruled.

But the battle of Buxar changed the whole situation. The plain fact was that at the field of Buxar the English had conquered the three provinces and that these lay prostrate at their feet, but the Directors thought otherwise and refused to recognise this. The Company's sevants, too, could not yet contemplate a Government of Bengal without a Nawab. This time, too, their idea was that they were fighting "to maintain on the *musnud* of Murshidabad a ruler powerless to uproot the British factories." Consequently, on the outbreak of war with Mir Kashim, Mir Jafar had been reinstated on the *masnad* and, on his death, his son Najibuddowla

was hastily raised to the throne in order "to reap the last harvest of presents."

But the Calcutta Council was careful, at the same time, to adopt certain measures which would make the rise of a second Mir Kashim impossible. The most important of these was the taking over in their own hands of the entire control of the military forces of the country. By Article 4 of the treaty that was concluded between the Governor and Council of Fort William, on the part of the English East India Company, and Najibuddowla, on the 20th February, 1765, Najibuddowla "confirmed to the Company, as a fixed resource, for defraying the ordinary expenses of their troops, the Chuklas of Burdwan, Midnapore and Chittagong." He also agreed to continue the payment of five lakhs of sicca rupees per month, heretofore agreed by his father, "while the exigency of keeping up so large an army continues." And lastly, it was arranged that, as the Company's troops were entirely equal to the task of the defence of the provinces, Najibuddowla

imself would maintain only such "as are im-
ediately necessary for the dignity of his
erson and Government, and the business of
ollections throughout the Provinces."[1] Thus
he process of gradually gathering in the
Company's own hands the control of the
ntire military organisation of the country
was finally completed.

This is not all. Some further steps were taken which assured for the Company a certain amount of control over the actual administration of the country as well. Article 2 of the treaty provided for the appointment, with the advice of the Governor and Council, of a Naib Subah, who would have, immediately under the Nawab, the chief management of all affairs. Muhammad Reza Khan, the Naib of Dacca, was selected for the office and the Nawab gave an undertaking that the said Reza Khan would, in no case, be removed, save and except with the approbation of the Governor and Council. By Article 3 the Nawab agreed that the

1 Aitchison, *op. cit.*, Vol. 1, p. 58.

Mutsaddees in the several branches for the business of revenue collections would be appointed with the approbation of the Governor and Council. In case the Governor and Council disapproved of any appointment the Nawab would pay a proper regard to such representation. By Article 8 the Nawab also gave an undertaking that Murshidabad would always remain the seat of his Government and that the books of the Sarkar would be kept there. The Nawab also agreed that an English gentleman would reside with him to transact all business between him and the Company.[1]

It will thus be seen that what Ramsay Muir calls "the obvious moral of 1764"[2] was not recognised and the policy of maintaining a native government at Murshidabad with such safeguards as would permanently secure the interests of the Company was adopted. Henceforward the Company had the absolute control of the military forces of

1 Aitchison, *op. cit.*, vol. I, pp. 57-60.

2 Ramsay Muir, *The Making of British India*, p. 39.

the Government, and this, together with the safeguards adopted with regard to the administration of the country, reduced the Nawab in reality to "a mere pageant and a shadow." In the meanwhile, alarmed at the turn events had taken in Bengal, the Directors sent Lord Clive as Governor for the second time to Bengal and on May 3, 1765, Clive returned to Calcutta, with powers to supersede the Council and form a Select Committee, if necessary. After perusing the past Minutes of the Council Clive came to the conclusion that "the measures taken, with regard to the country government, have been at best precipitate; and the gentlemen here, knowing that the arrangement of all affairs was absolutely vested in the Committee, might, I think, have avoided going the lengths they have till my arrival. But I am determined not to be embarrassed by the errors of others, if in my power to remedy them "[1] But the main principles of the late arrangement that the

1 Forrest, *op. cit.*, vol ii, p. 260.

native government should be maintained, that the army should be under the absolute control of the Company, who should also exercise a certain amount of supervision over the administration, Lord Clive also accepted. Some readjustments, however, were thought to be necessary, particularly after Clive's acquisition of the *Dewani*, on the 12th of August, 1765. The Firman of Shah Alam states: "We have granted the English Company the Diwani of the Provinces of Bengal, Behar and Orissa.....as a free gift and *altamgau*, without the association of any other person.....it is requisite that the said Company engage to be security for the sum of twenty-six lacs of rupees a year, for our royal revenue, which sum has been appointed from the Nawab Najm-uddaula Bahadur and regularly remit the same to the royal *Sarkar*, and in this case, as the said Company are obliged to keep up a large Army, for the protection of the Provinces of Bengal, etc., we have granted to them whatsover may remain out of the revenues of the said

Provinces, after remitting the sum of twenty-six lacs of rupees to the royal *Sarkar*, and providing for the expenses of the *Nizamat*."[1] This was followed, on the 30th of September, 1765, by a further agreement with Najibuddowla, by which the Nawab agreed to accept annually the sum of Sicca Rupees 53,86,181-9, as an adequate allowance for the support of the *Nizamat*; Rupees 17,78,854-1 for the Nawab's household expenses, servants etc., and the remainder "for the maintenance of such horses, sepoys, peons, burkundanzes, as may be thought necessary for his *suwarry* and the support of his dignity only."[2]

The Nawab's authority was thus completely crippled, though the show was kept up as a matter of deliberate policy. In the last Minute that he recorded as the Governor of Bengal Lord Clive said : "We are sensible that since the acquisition of the Dewanny the power formerly belonging to the Soubah of

1 Ramsay Muir, *op. cit.*, p. 84.
2 *Ibid.*, p. 85.

these provinces is totally in fact vested in the East India Company. Nothing remains to him but the name and shadow of authority. This name, however, this shadow, it is indispensably necessary we should seem to venerate. Every mark of distinction and respect must be shewn him, and he himself encouraged to show his resentment upon the least want of respect from other nations."[1] All appearance of dominion was to be avoided as much as possible so that the jealousy of the native powers and the other European settlements might not be roused. Inspite of the fact, therefore, that the Company had acquired the *Dewani* in their own right, in actual organisation of the governmental machine, Lord Clive did not go much further than the old Governor and Council. The native agency for collections was retained, only the Resident at Murshidabad was made also a Supervisor of collections under the inspection and control of the Select Committee. Further, as Clive thought that the

1 Forrest, *op. cit.*, vol. II, p. 335.

powers vested in the Naib Subah were too large to be lodged in a single individual, two others were associated with Muhammad Reza Khan in the superintendence of the Nawab's affairs.

This plan of a "Double Government," as we have seen, proved a failure but it was thought that the breakdown was due not to any inherent defect in the plan itself but because it had not been sufficiently adhered to. Verelst wrote : "We insensibly broke down the barrier betwixt us and Government and the native grew uncertain where his obedience was due," or in other words, the show of the Nawab's authority had not been properly maintained and the result was that "such a divided and complicated authority gave rise to oppressions and intrigues unknown in any other period." Inspite of the painful experiences of his period of Governorship Verelst's faith in Lord Clive's system remained as strong as ever. Just before his departure he wrote : "There is a rock, and a dangerous one, which requires the greatest circums-

pection to avoid. We have stepped forth beyond all former precedent or example. We have the best and most laudable of all arguments to justify our conduct. But it should be remembered that we have reached that supreme line, which, to pass, would be an open avowal of sovereignty. It should be remembered that we cannot be more, without being greater than sound policy allows; the interests of our employers at home, no less than our national connections abroad, forbid it·····There is, however, a middle way, where moderation must guide and continue us.·····Exteriors should be regarded as essentials. Every order should scrupulously wear the sanction of the native government. Our dependence on its indulgencies, our obedience to its commands, our delicacy to its ministers, should appear most conspicuous in all transactions, either of business or ceremony."[1]

Warren Hastings, however, had already been thinking in terms of "a British empire

1 Firminger, *op. cit.*, p. xi.

in India" and did not believe in this view of the matter. As we have seen, in his administrative reforms of 1772 he attempted to break through the anomaly by openly making the Company the responsible governing body in Bengal. Weitzman says : "The Nizamat, the official duties of the Nawab, hitherto exercised by Muhammad Reza Khan, were taken over for the Company. To make the change patent, the seat of government was transferred from Murshidabad, the native capital, to Calcutta, the headquarters of the Company."[1] But Hastings' own view of the matter appears to have been somewhat different. As Firminger points out: "Although in 1775 Hastings explicitly disavowed any reliance on a Murshidabad sovereign power for the changes made in 1772, there was, between the legislative acts of 1772 and the debates of Council in 1774, a middle period in which, instead of treating the Nawab's sovereignty as evacuated, Hastings merely maintained the right of the Company

1 Weitzman *op., cit.*, pp. 4, 5.

to supplement it when necessary." In 1773 Hastings still professed that the Nazim was the final judge in all criminal cases and the officers of his courts acted according to their own laws, forms, and opinions, independent of the control of the Company's government.[1]

It should also be noted that the Sadar Nizamat Adalat was soon removed to Murshidabad and completely released from the supervision of the Governor and Council. Moreover, the reforms of 1774 which caused the withdrawal of the collectors freed the district criminal courts from the so-called superintendence of the Company's officers. And finally, when the Majority revived the office of the Naib Subah again in the person of Muhammad Reza Khan, the old anomaly reappeared. The contention could even now be plausibly advanced that though by virtue of the grant from the Emperor the Company, in their own right, controlled the Dewani and though through the treaties with Najib-uddowla and the successive Nawabs the

1 Firminger, *op. cit.*, p. xii.

Army was fully under their authority, the criminal courts and the Faujdars were still the Nawab's own untrammelled domain. Indeed, later on Warren Hastings himself subscribed to the view that the Naib Subah represented what remained of the majesty of the empire in these provinces.[1]

It can be easily surmised that such a contentious matter was very likely to prove a source of dispute between the Court and the Council, and a few months after the institution of the Supreme Court two cases arose, in which the entire question of the sovereignty of the Nawab was directly raised. These were the cases for conspiracy, the first instituted by Hastings against Joseph Fowke, Francis Fowke, Maharaja Nanda Kumar, and Rai Radha Charan, and the other by Barwell against Joseph Fowke, Nandakumar and Radha Charan. The Majority consisting of Clavering, Monson and Francis wrote a letter to the Judges of the Supreme Court, intimating to them the fact that Radha

1 General Appendix, 13, para 19.

Charan was a Vakeel of the Nawab Mubarak-uddowla and claiming on his behalf "the rights, privileges, and immunities allowed by the Law of Nations and the Statute Law of England to the representatives of Princes." On the 28th of June, 1775, the matter came up before the Court for discussion. On the one hand, it was argued that the Nawab "exercises criminal justice throughout his dominions, and signs the death-warrants, without any controul whatsoever from this Government. He has exercised the right of sending Ambassadors from time immemorial. He is possessed of a royal mint, and coins money. He keeps in pay a body of troops. From all these circumstances, it is evident, he is a Sovereign Prince." The rest of the argument was concerned, more or less, with the political aspect of the question. It was urged that "the asserting that the Nawab is not the Sovereign would be productive of the most dreadful consequences. It would, in all probability, be productive of a war between us and the several European nations

who have settlements within the Provinces. For if the sovereignty is vested in the Company all the disputes within the Provinces must, of course, be decided by us."

On the other hand, the argument was that "the only presumptive act of Sovereignty vested in, or exercised by, Mubarick ul Dowlah is his signing the warrants of capital convictions in the Presidency Audaulet Court, before they are carried into execution; but even this is a delusion; and political motives in the Company, when they created these Courts, induced them to vest this power in him." The Nawab's Army was, in like manner, a delusion, because it consisted of nothing more than his *Suwarry*, of which also the number of sepoys and peons is limited by the Company. But the most important piece of evidence which seemed to have weighed most heavily with the Court was what was supplied by the affidavits sworn by Warren Hastings and Vansittart. These were to the effect that the late reforms in the administration of justice were carried

out by Hastings and his Council on their own authority, without any consultation with the Nawab whatsoever.[1]

The Chief Justice's conclusion was: "The Governor's affidavit proves the revenues, their collection, the whole administration of justice, both civil and criminal, and even the appointment of the Nawab's household, to be in the Company. Mr. Lane, Mr. Hurst, and Mr. Vansittart, all members of the late Council, depose that all the military is so likewise. They swear that the whole military power of the Province is, and has been for several years entirely under the control of the Company and their representatives. They swear that he performs no act of sovereignty independent of, and without the consent, of the representatives of the East India Company. Nothing, therefore is left to Mubarick but an empty title."[2] In his characteristic style Le Maistre said: "With regard to this phantom, this man of straw, Mabaruck ul

1 Firminger, *op. cit.*, pp. xv—xvii.

2 *Ibid*, p. xvii.

Dowla, it is an insult on the understanding of the Court, to have made the question of his sovereignty. But it comes from the Governor General and Council ; I have too much respect for that body to treat it ludicrously, and I confess I cannot consider it seriously ;" and Hyde observed : "The Act of Parliament does not consider Mobaruck ul Dowla as a Sovereign Prince ; the jurisdiction of this Court extends over all his dominions ; his situation is not such as will enable him to confer the character of Ambassador."[1] The result was that Radha Charan's claim for immunity was disallowed. The unanimous opinion of the Court was : "That neither the East India Company nor their servants, both being subjects to the laws of the King of Great Britian, can, by interposing the name of the Nawab, screen any criminal from the justice of the Court," as that would be tantamount to "an illegal execution of the

1 General Appendix, 3, Enclosure, 5.

powers of a double Government to defeat the King's laws."[1]

It appears, however, that Justice Chambers, though he agreed with his collegues with regard to the main question of Radha Charan's immunity, held that the situation was such that no direct verdict on the question of the Nawab's sovereignty was called for. He observed: "In this state of things .....I should not think myself obliged, whatever might be my private opinion, unnecessarily to decide, that the King, my master, is not Sovereign of these Provinces, and to decide that he is, I would wish likewise to avoid, because the Parliament seems cautiously to have avoided it, by founding the jurisdiction of this Court over those who do not reside in Calcutta or the inferior Factories, on personal not local subjection; and because such a decision might engage us in quarrels with the French and other European nations who have possessions in Bengal."[2]

1 General Appendix, 3, Enclosure, 5.
2 Firminger, *op. cit.*, pp. xvii, xviii.

In the Minutes of the Council, dated the 15th September and the 21st November, 1775, the Majority also laid special stress on this view of the matter. They wrote: "If for reasons of the most serious and political importance, we endeavour to support the authority of the Country Government, and the Sovereignty of the Soubah, we have not only the foreign factories, but the Supreme Court of Judicature to contend with; they publicly deny the existence of such a Government, and effectedly hold out the person and authority of the Prince to the contempt of the world." And again: "We are unable to tell how any part of our address to the Judges on behalf of Roy Radachund, could reduce them to the necessity of deciding on the Nawab's sovereignty: Mr. Chambers was of opinion that the Vakeel's privilege might be dismissed on other grounds." In short, the Majority complained that the Court had not paid adequate consideration to the political aspect of the matter and had unnecessarily dragged in the question of the Nawab's sovereignty.

In his letter to Lord Weymouth, dated the 20th January, 1776, Impey replied to these charges in the following words: "The only case in which the authority of the Soubah has been mentioned in the Court, was that of Roy Radachund. Was it really a matter of secret political importance to claim the privilege of an ambassador for the Vakeel of the Nabob, when neither the Vakeel or the Nabob entertained the least idea of such a right, I believe neither your Lordship nor the Directors, will see any political consequences in it. Had he not been obliged to plead to the indictment, is there a foreign nation that would have looked up the more to Mabouck's sovereignty, or have thought there was less authority in the hands of the Company's servants? it might have proved to them, and the English, that there was more. How was the authority of the Country Government concerned? none of its powers were abridged.—From the solemn and pompous introduction of this article, they seem to endeavour

to persuade even the Court of Directors, that the person whom they order the Governor General and Council to hold out as the ostensible, is a real Sovereign. They ought to reflect, that (our) situation is different from theirs, and that however willing we have shown ourselves, in all instances, to assist the interest and advance the prosperity of the Company, we act upon our oaths, and must determine by evidence. They do their duty in obeying their superiors, by holding them (him) out as the ostensible; we should be guilty of a breach of duty, and of oaths, should we solemnly and judicially determine him to be the acting ruling Sovereign of this Province." Further, with regard to the complaint of the Majority that there need have been no decision about the Nawab's sovereignty, Impey wrote: "The Judges did not think themselves under any such necessity, they only declared, that the Company's servants who set up the sovereignty to the Nabob, could not do it to protect a criminal, subject to the jurisdiction

of the Supreme Court, from the King's laws. The Judges did not think that ought to be a matter of doubt. The gentlemen who made the claim, must set up the Sovereignty of the Nabob as the main question: it is extraordinary that they complain that the Judges did not avoid that question."[1]

It thus appears that in what they did the Judges acted perfectly within their rights and that in raising the question of the Nawab's sovereignty the Majority itself adopted a meddlesome and obstructive attitude. The policy of holding up the Nawab as the ostensible Sovereign could no longer deceive anybody and in the case of Radha Charan the Judges made this plain. It should be noted, however, that Francis did not believe in the policy of Warren Hastings making the Company the actual ruler of the provinces in name as well as in responsibility. Hastings held: "All the arts of policy cannot conceal the power by which these provinces are ruled, nor can all the arts of sophistry avail to

1 General Appendix, 3, Enclosure, 28.

transfer the responsibility of them to the Nawab, when it is visible as the light of the sun that they originate from our own Government, that the Nabob is a mere pageant without so much as the shadow of authority."[1] His attempt, therefore, was to break through the ambiguity which, in his view, was the mainspring of the evils of the past. Francis, on the other hand, thought that "the Company was the scourge of Bengal," and that "the servants of a trading concern could never be converted into fit instruments of goverement."[2] He believed that the existing evils were due not to defects in the native constitution, inherited by the English, but to the presumptuous interference by the Company's servants : they were the natural results "of reducing the just and constitutional powers of the Nizamat to their present feeble state." According to him Clive was 'the safest guide' and he, therefore, thought that the only feasible policy was to revert to the

1 Forrest, *Selections etc*, vol. II, pp. 452, 453.
2 Weitzman, *op. cit.*, p. 59.

ancient institutions of the country and to govern the provinces through the medium of the Subadar.[1] It thus appears probable that the attempt of the Majority to set up, in the case of Radha Charan, the sovereignty of the Nawab, was not the result, as Impey seems to insinuate, of mere meddlesomeness, but of a clear and honestly held policy.

Whatever that might be, the result of the decision of the Judges was to obliterate the distinction between the servants of the Dewani and those of the Nizamat, so far as the jurisdiction of the Supreme Court was concerned. But as matters stood, the difference between the two was real and not at all negligible, whatever the legal position might be. The Dewani was directly managed by the Company's own officers through the Provincial Councils, whereas after the withdrawal of the Collectors and the restoration of the office of the Naib Subah, the Nizamat again emerged as a distinct entity,

1 Weitzman, *op. cit.*, pp. 56, 62.

maintaining its old forms and its old procedure. After the relinquishment by the Governor-General of his task of controlling the Nizamat Adalat, "which consisted merely in revising and giving tacit sanction of the sentences of the Adalat, and the warrants of the Naib Nazim, and in urging the attention of the officers to their duty,"[1] all outward connection of the Company with the Nizamat Courts ceased, and inspite of what the Judges held in the case of Radha Charan, the Governor-General and Council soon took up the position that "the servants of the Nizamat were not in the employ of the Company or of any British subject" and were consequently outside the jurisdiction of the Supreme Court. It seems that this distinction between the Dewani and the Nizamat was also recognised by the people at large because we find that resort to the Supreme Court against officers of the Nizamat was much rarer than it was with regard to the officers of the Dewani and the Zamindars.

1 General Appendix, 3, Enclosure, 15.

We have already seen how in several cases the processes of the Supreme Court led to sudden and unexpected interruptions in the regular course of criminal justice in the country. But these interruptions were indirect and arose, as we have seen, out of the Court's assumption of a temporary jurisdiction over the Zamindars, so that the question, as to whether the officers of the Nizamat were or were not under the jurisdiction of the Supreme Court, was not directly involved. However, as things stood, such cases were bound to arise and in their letter to the Court of Directors, dated the 15th January, 1776, the Governor-General and Council complained that the Supreme Court was interfering in an illegal manner with the officers of the Nizamat. They wrote : "By letters lately received from the Nabob Mobaruck ul Dowla and his Minister, we understand, that a warrant has been issued from the Supreme Court to arrest two persons for debt, who are servants of the Nizamat, and have never been either in the

employ of the Company, or of any British subject. The Governor-General on this occasion applied to the Chief Justice ; who sent him the purport of the affidavits, by which the persons against whom the warrant had been granted, were declared to have been resident in Calcutta, at the time the cause of action accrued. We conceive, that supposing the Court of Judicature to have a local jurisdiction in Calcutta, and the Factories dependent, the single circumstance of having formerly resided in Calcutta, if even a fact, could not render these people liable to the jurisdiction of the Court, after their removal to parts of the provinces not within the limits of our Factories ; yet we thought it would be improper for us to interfere in any manner between the Nabob and the Judges, and have therefore, in reply to this letter, only mentioned our opinion as above stated ; and for his further information, we sent him a copy of the Act of Parliament ; telling him at the same time, that the Judges were accountable for their conduct to the King of Great

Britain ; and leaving it to him to take such measures, with the advice of his Ministers, as he may judge necessary for the support of his own dignity, and the rights of the Nizamat."[1] It will be seen that inspite of what the Judges said in connection with the case of Radha Charan, the Majority[2] still persisted in their contention that the Nawab's administration of the Nizamat was independent of any control whatsoever of the Company but it should be noted that this case too did not directly involve the question of the Court's jurisdiction over the officers of the Nizamat. The Court assumed jurisdiction over the persons concerned, not because they were servants of the Nizamat, but because they had been residents of Calcutta at the time when the cause of action accrued.

Two other cases, however, soon occurred in which the Naib Nazim himself became

1 General Appendix, 3, Enclosure, 5.

2 Though the letter had been sent in the name of the Governor-General and Council, it appears that they did not "unanimously concur in these sentiments." Hastings and Barwell, as usual, differed.

directly involved and a very grave situation arose. In their letter to the Court of Directors, dated the 25th January, 1780, the Governor-General and Council wrote : "We have seen with astonishment, process of contempt ordered in one instance, and civil process issue in another, against the Naib Nazim of these Provinces residing at Murshidabad, the seat of the Country Government ; the former for not having made a return to a writ of Habeas Corpus, commanding him to send up certain persons whom he had caused to be apprehended on a charge of forgery, but whom, before their guilt or innocence could be ascertained, he had, from motive of respect to the Supreme Court, sent to give evidence in a cause then pending before it ; and having in order to bring the process to a conclusion, again seized them upon their return to Murshidabad ; such assertion of an authority inherent in his office, was declared by the Court to be a violation of that protection to which a witness is entitled eundo et redeundo ; and the Naib Nazim having made

no return to the writ of Habeas Corpus, which had issued upon the occasion, an attachment was immediately ordered against him, as for a contempt. The civil process had issued, we suppose, upon the usual Affidavit of a debt ; the Affidavit stating him to be subject to the jurisdiction, and also under what description he was so. It were, however, well worth the consideration of the Judge who signed it, and who could not be ignorant of the character which the defendant filled, to what difficulties a stubborn and unbending adherence to a rule of practice, which appears to have been upon slender experience unadvisedly framed, might in this instance have subjected both branches of administration."[1]

It is also on record that when the writ of Habeas Corpus was served upon the Naib Nazim in his Darbar, he being apprehensive of doing any act which might be construed to an acknowledgement on his part of the jurisdiction of the Court, and at the same

1 General Appendix, 13, paras, 11, 12.

time cautious to avoid offence, desired the Sheriff's officer to leave the writ on a chair in his presence. "The officer on his return made affidavit of the fact, with such a colouring of it, as induced the Judges to regard it as an insult offered to their authority, and immediately to order an attachment to issue against him." The situation became a desperate one. It could be easily seen what serious consequences were likely to follow from such an outrage so publicly offered to the person of the man in whose hands was placed the entire criminal jurisdiction of the Provinces. The Governor-General and Council became very much alarmed because they saw that the only means by which this could be prevented was to be dreaded as much. Fortunately, the Commissioner of Law Suits succeeded in staying the execution of the writ by means of an affidavit and in the meanwhile the Governor-General used his influence to prevent the writ ultimately from taking effect. He persuaded the Naib Nazim to write a letter of concession to the Chief

Justice and "the Supreme Court ordered that the writ of attachment should not issue out of the office of the Clerk of the Crown, until the first day of the next term, and until further order." The writ was never afterwards enforced or noticed but "it remained impending as a terror over the head of the Naib Nazim until the day of his death."[1]

Thus the situation was somehow saved and the crisis averted. But we think that it is necessary to say a few words here on the way in which Sir James Stephen has treated this question. Of the several paragraphs that the Governor-General and Council devote to this matter, Sir James Stephen quotes only the following: "Not owning allegiance to the King nor obedience to his laws; having been born and educated and now living and having always lived out of his protection; deriving no benefit or security whatever in life or member, in fame, liberty, or fortune, from the administration of justice under those laws, and not having therefore

1 Report, pp. 68, 69.

the common consideration for which men at the first formation of society surrendered those portions of their natural liberty the aggregate of which constitutes the authority of the State, he claims, we conceive of right, as thorough an exemption from the controul of our laws, as nature has given him an alienage from us in blood, temper and complexion." On this Sir James Stephen remarks : "This was just as true of the rest of the population as it was of Mahomed Rheza Khan, so that the Council actually put their resistance to the Supreme Court expressly on the ground that Parliament itself had no authority to legislate for natives of India, and that if it affected to do so its enactments must be evaded or resisted."[1]

The gross unfairness of this statement of the position of the Council would, we are sure, be apparent to anybody who would patiently read through the letter in question. Sir James Stephen completely ignores the fact that the main contention of the Council

1 Stephen, *op. cit.*, vol. II, p. 216.

was that the Court should have been careful to carry and adapt the practice to the place and circumstances, instead of strictly and unbendingly following a rule of practice, formed, as the Council thought, on very slender and inadequate experience. The Council themselves admit that the arguments put forward in the above passage (quoted by Sir James Stephen) might not be tenable and they base their opposition to the Court actually on entirely different grounds. With regard to the case of the Naib Nazim they observe : "And here it is worth attention, that in him, upon whom, from so unlooked for a source, and for so trivial a cause, this complication of dishonour and distress might have fallen, resides the whole executive power of the Country Govrnment ; that he is also the Chief Magistrate of criminal justice throughout the Provinces whose powers, though the Legislature was apprized of them, the Statute has not abridged, and which, by being thus tolerated, we apprehend are legalised ; to which we may add, that in his

jurisdiction in matters of criminal cognizance the Judges have not only at all times acquiesced, but in a particular instance have actually resorted to it in aid and exoneration of themselves ; —that representing, as he does, what remains of the majesty of the Empire in these Subahs, and the exercise of his authority being the only present means of preserving peace and order throughout the Country, it should, in common policy, till some substitute is provided, be permitted, we think, to remain in all possible vigour and respect."[1] The Council also dwell at length on the dilemma in which the processes of the Court placed the Naib Nazim. "To plead, he must appear : the appearance would amount to an admission of a power in a Court to compel it ; and the pleading presupposes a right to admit or overrule the plea ; and thus at once decide upon his rights, and its own jurisdiction..... Thus circumstanced, to whatever side he turns he has cross penalties to encounter.

1 General Appendix, I3, para, 19.

Does he disobey the Summons, a Capias and Sequestration follow. Does he appear and plead to the jurisdiction, though the plea is received and held good, the oath dishonours him, and brings his authority, and that of the Country Government, into discredit and contempt with his people; and finally, should it be over-ruled, an indictment for perjury may be preferred; upon which, if convicted, the pain and ignominy of the punishment are such, that, to a man, who stands upon the eminence in point of station that he does, death compared to it were mercy."[1]

It will thus be seen that the main contention of the Council was that in such a delicate and difficult case the Court might easily have varied their rule of practice but curiously enough Sir James Stephen ignores all these and condemns the Council outright on the strength of certain remarks which they themselves practically repudiate in the very next paragraph. Beveridge's charge,

1 General Appendix, 13, paras, 16, 18.

that Sir James Stephen often looks at questions from the point of view of a mere practising lawyer,[1] may not, it thus seems, be entirely groundless. Whatever that might be, the case of the Naib Nazim, as we have seen, was somehow "managed" and the crisis averted but before this another case had occurred which clearly illustrates "the effects produced by the residence of an Attorney of the Supreme Court in a distant province, and the interruption given to the administration of criminal justice in the country Courts by his proceedings." To a detailed discussion of this case, which is known as the Dacca Case, we shall devote the next chapter.

1 Beveridge, *op. cit.*, Introduction, p. 6.

CHAPTER IV

The Dacca Case

Mr. Samuel Peat, a young man of about 17, was appointed a clerk, attendant on Mr. Justice Hyde, and remained in that office till June 1777.[1] Almost immediately afterwards he came to Dacca and took up his residence in that city in three independent capacities, viz : as an Attorney of the Supreme Court, a Master Extraordinary for taking affidavits, and an agent of the Sheriff. As we have seen, the Governor-General and Council had objected to a European thus going into the country without their permission but the Judges insisted that they had every right to send Attornies into any parts where their jurisdiction extended and the

1 It appears from an entry in General Appendix, 40 (An account of charges incurred for the maintenance of the Supreme Court, etc.) that Mr. Peat was appointed a clerk in the Supreme Court in November, 1774.

Council had to yield. The Court's view of the matter was thus put by Mr. Justice Hyde: "By the Act of Parliament and the Charter establishing this Court, great numbers of persons, in every part of the Provinces, are subject to the jurisdiction of His Majesty's Court; and all persons are entitled to sue in it. The propriety, therefore, and utility, of having, in so populous a city as Dacca, an Attorney to whom those who were either plaintiffs and defendants in suits in this Court, might, if they thought fit, apply for assistance in their suits, and also the propriety of having an officer of the Court authorised to take affidavits in such a place, is to me very apparent; for compelling men, to the great expence and trouble of a journey to Calcutta, to institute their suits, is putting an obstruction in the way of that justice, which it was the gracious intention of His Majesty's Charter to have dispensed to the inhabitants of these Provinces; to all of them as plaintiffs; and towards those described in the Act of Parliament, and the Charter, as

defendants." He goes on to add : "The great expence of executing the process of the Court, at any considerable distance, has induced the Court to recommend many times to the Sheriff, to procure Agents at all the different factories, which would considerably lessen that expence, and is a benefit to all suitors ; and it is also a considerable benefit to the defendants, who in places where there is no proper Agent for the Sheriff, are almost always obliged to be brought to Calcutta, to give bail, because the Sheriff cannot trust his Bailiffs with the charge of judging of the sufficiency of the bail. But this trust he does repose in Mr. Peat."[1]

It thus appears that the main reason of Mr. Peat's arrival at Dacca and his subsequent residence there was to make the justice and protection afforded by the Supreme Court more easily available to the people of the locality. The defendants also were to be saved from the trouble of going over to Calcutta by being provided with facilities

1 Dacca Appendix, 4.

so that bails might be locally furnished. In other words, the object was to remove the difficulties and inconvenience that arose from the very great distance at which the Court was seated. All this seems quite reasonable and ostensibly the sending of Mr. Peat to Dacca was a step in the right direction. Indeed, the Dacca Council hoped "that as an Attorney is supposed to be learned in the law, and conversant in the practice of the Court he belongs to, much convenience might have arisen to the people of the province, from the residence of a gentleman of that profession at Dacca ; that individuals might have been instructed in what cases,and against what persons their redress would regularly lie in the Supreme Court, and that those whom the law has not made amenable, might not be exposed to trouble, nor the Government be obstructed in the collection of its revenue."[1]

But the very first case in which Mr. Peat interfered, very soon after his arrival at Dacca, dashed these hopes to the ground. A

1 Dacca Appendix, 5.

European named Mr. Ford had confined and flogged a native who complained to the Dacca Council. As the state of his back fully attested the truth of his complaint, the Council sent him to the Provincial Faujdar asking him to take notice of this act of violence. As we have said before, "All matters of criminal jurisdiction were under the sole cognizance of a Court, styled the Phousdarry, or Criminal Court, consisting of a Provincial Phousdar or criminal judge, a Darogha or Superintendent, and various officers learned in the Mahomedan laws." The Faujdar was thus the most proper person to take cognisance of the offence and the Daroga accordingly sent sepoys to apprehend the said Ford and put him under confinement. The very next morning he received a note from Mr. Peat to the effect that unless the Faujdar released Mr. Ford immediately or explained satisfactorily the reasons for confining him, he would apply to the Supreme Court for redress. The Daroga got a fright and released the prisoner. Thereupon

the Dacca Council wrote to their superiors : "As Mirza Mazoom (the Daroga) acts in the character of a judge in criminal causes, on the part of the Country Government, we presume he is in nowise amenable to the Supreme Court ; and therefore request to be favoured with your instructions regarding the attention he is to pay to such warrants, and his future conduct on similar occasions. We shall only observe here, that if Mr. Peat is suffered to interfere with the authority of the Phousdarry, it will be impossible to preserve the peace and quiet of this city, and particularly to protect the inhabitants against the violence of low Europeans."[1]

The Governor-General and Council were very much annoyed and wrote back to say that the case was self-evident and seemed to require no instructions. In their opinion the Faujdar "has been guilty of a breach of duty in releasing a prisoner of the Adalat, on the assumed authority of an individual", but as they supposed that the Faujdar must

1 Dacca Appendix, 1.

have had some grounds for believing Mr. Peat to possess extraordinary powers and that he had acted under such an impression, they urged upon the Dacca Council the imperative necessity of undeceiving him and making him understand that "Mr. Peat, while he remains at Dacca, resides there on the same footing only with every other inhabitant."[1]

But this was more easily said than done and the impression that Mr. Peat was possessed of an extraordinary authority was not very easy to dispel. It appears that the arrival of Mr. Peat had made a great stir in the city. "He was received with great distinction on his arrival, many persons having gone to the boundaries of the province to meet him, and visits having been paid to him by the natives, particularly by the grandsons of Nabob Jefferut Cawn, formerly Governor of the Dacca Province under Jaffier Ally Cawn; all which compliments are not usually paid to any but the Chief of the Council who

1 Dacca Appendix, 2.

presided over that Province." Mr. Peat soon came to be known as the Naib or Deputy of the Supreme Court and the term of Kachari was applied to his house. In fact, "the people of the country, accustomed to an arbitrary authority and summary process, naturally judged of Mr. Peat, and the nature of his employments, from the power which they saw proceeded from him, in receiving complaints, issuing processes of arrest, and personal imprisonment; and all these avowedly independent of that authority they had been used to respect."[1] It is thus not very difficult to see why the Dacca Council failed to make the native officers of the Government understand the real nature of Mr. Peat's occupation. They conceived Mr. Peat to be possessed of powers which superseded those of the Provincial Council and the adherents of Mr. Peat sedulously sought to ensure that this impression, in no way, relaxed. As the Dacca Council wrote: "Neither is this impression likely to decline, it being kept up

1 Report, p. 28, Evidence of Boughton Rouse.

with great art in the minds of the people, by his Banyan, by the reports he spreads, the pomp of his palanquin and retinue, as well as by the encouragement he gives to all persons to apply to his master through him; by buoying them up with the hopes of recovering great damages. Add to this the number of notes Mr. Peat disperses through the city and province, a general alarm has been spread among all the inhabitants; who consider these notes as orders to pay the sum demanded by his client, not to answer to the demand. Further, as he officiates as Deputy Sheriff, it affords him an opportunity of confining such persons as are apprehended by warrants from the Court issued at his application, which confirms the inhabitants in their opinion of his acting in all cases by public appointment."[1]

The Governor-General and Council had also taken some steps to counteract this impression about Mr. Peat that was getting abroad but with no better results. As soon

1 Dacca Appendix, 3.

as they had been informed of the release of Mr. Ford through the interference of Mr. Peat, they wrote to the Dacca Council: "The Daroga having, in this instance, withheld from the complainant that justice which his office made it his duty to have afforded him, we recommend it to the plaintiff to repair to Calcutta to prefer his complaint to one of His Majesty's Justices of the Peace; and as we think it an act of justice, on such an occasion, that his expences should be defrayed by Government, we authorise you to advance him a sum for that purpose." The man was accordingly sent to Calcutta with a letter to Mr. Sumner, the Secretary to the Supreme Council of Revenue at Calcutta, requesting him to take all necessary steps in the matter.[1] We do not find any further mention of this case in the records but this much is certain that, whatever the sequel might have been, it could not produce much of the desired effect with regard to the activities of Mr. Peat. At the same time, the Council

1 Dacca Appendix, 2

had, on the motion of Francis, communicated a copy of the letter from the Dacca Council to Mr. Justice Hyde. Francis argued: "As it is well known that Mr. Peat did belong to his family, it is possible that the acts of misconduct with which Mr. Peat is charged, may be supposed to be countenanced by Mr. Hyde. It must be left to his own judgment to determine whether it may be proper or necessary for him to make any enquiry into them. I am the more desirous that this should be done, because it will afford Mr. Peat an opportunity of justifying himself, if he thinks proper, by a representation to the Board."[1] In reply to this reference Mr. Hyde explained the reasons for Mr. Peat's having taken his station at Dacca, and the advantages that were to be expected therefrom, and said: "I presume the reason of your communicating these letters to me, is, that I may require Mr. Peat to give an account to me, in answer to what you are pleased to call 'acts of misconduct'; but I

1 Dacca Appendix, 3.

confess, if I had any authority, or were inclined to require an account from him, I should be at a loss to know what misconduct was charged on him in these letters."[1] Thus nothing came of this reference and Mr. Peat went on as merrily as ever.

In their letter, dated the 18th September, 1777, the Dacca Council complained that the extension of the authority of the Supreme Court through the unwarranted activities of Mr. Peat was practically making all business of Government, more or less, impossible and they explained the helplessness of their position in the following words : "*It is in vain for* us to make public the clauses of the Act of Parliament, or to explain the orders you have been pleased to send us, in consequence of our former references, when a Zamindar, who has been advised to reply to the lawyer's note, that he comes not within the jurisdiction of the Court, is actually a few days afterwards committed to prison by a warrant. Thus no man can say who is and

1 Dacca Appendix 4.

who is not within the jurisdiction; and surely nothing favourable can be expected from a law, or its application in practice, which is deficient in the primary excellence of all laws, certainty."[1] It will have been seen that the strength of Mr. Peat's position arose from the fact that, besides being an Attorney of the Supreme Court, he was also a Master Extraordinary for taking affidavits, as also an agent of the Sheriff, and as the common people could not understand the distinctions involved, they very naturally regarded Mr. Peat as being possessed of extraordinary powers even higher than those of the Provincial Council. On the other hand, the records show that Mr. Peat was not always very scrupulous as to the ways in which he utilised his opportunities so that very soon something like a deadlock ensued. The conflict of authority became daily more acute and the people naturally grew uncertain where their obedience was due.

1 Dacca Appendix, 5.

It appears that Mr. Peat soon built up an extensive practice by issuing his *chits* right and left. As was to be expected, he soon made his name a terror to the Zamindars against many of whom the lawyer's note was issued and which was followed in several cases by writs and imprisonment. The question of the Court's jurisdiction over the Zamindars has, however, already been discussed in detail and we think that it is unnecessary to take the matter up again. But the point is that Mr. Peat was not always very scrupulous as to the persons to whom he issued his notes and sometimes it seems that he did not care at all for what the Act and the Charter said as regards the jurisdiction of the Court. A typical case of this description was that of Loyla Begum, a daughter of Sarfaraz Khan, a previous Nawab of Bengal. The substance of her complaint was that Murshid Kuli Khan had built a Masjid in the City of Dacca and that he had also established a fish bazar, the revenues of which were to defray the charges of the

said Masjid. From that day onward none of the successive Sovereigns had ever attempted to take away from the Masjid the bazar allotted for its support. But a few months back a man named Kafussel Ali started a rival bazar and drew the fishermen away. However, after some time the fishermen of their own free will came back to the former bazar and rebuilt their huts. An attempt was thereupon made to take the fishermen forcibly away but the Begum applied to the local Council for assistance and this was stopped. Soon after Mr. Peat sent two *chits* to the Begum, at the complaint of two ryots, threatening her that suits will be commenced against her in the Supreme Court unless she made conmpensation for the force used against them and allowed them to leave the Bazar. The Begum replied : "I am not a servant of the English, and I will answer to no complaint in the English Court." But she was apprehensive that force might be used against her and consequently applied to the Council for

protection.[1] Nothing further happened but this case of the Begum unmistakably shows that all the high-sounding effects that Mr. Justice Hyde had expected to follow from Mr. Peat's residence at Dacca remained mere "pious wishes" and that Mr. Peat himself became concerned primarily with the task of extending the jurisdiction of the Court and thereby his own business.

Fortunately or unfortunately Mr. Peat soon became involved in a case, which terminated prematurely his merry career at Dacca. The records are not very clear or consistent with regard to the circumstances out of which the case arose but something like the following can be made out. It appears that complaints being made against a man named Khyroo, who was a pyke (a servant or messenger), he was arrested by the Faujdari Court, and upon regular conviction and decree of that Court, was confined and obliged to make restitution. However, in July, 1777, a writ of Habeas

1 Dacca Appendix, 5, Enclosure, 3.

Corpus was obtained from the Supreme Court for the removal of this Khyroo from the custody of Badal Singh, an officer belonging to the Faujdari Court. The writ was returned as Badal Singh denied having Khyroo in his charge. "In the mean time the Naib Subah expedited an order to the Phousdarry, requiring that Khyroo should be sent prisoner to him, to answer to some complaint exhibited at his tribunal. Khyroo was accordingly sent to the Naib Subah at Moorshedabad." It was conjectured that Khyroo somehow made his escape to Calcutta and instituted a suit against Jagannath, the Dewan or principal public officer of the Faujdar of Dacca, for trespass and false imprisonment. Thereupon, a process of arrest in which bail for ten thousand rupees was required, was issued by one of the Judges of the Supreme Court.[1]

On the arrival of the warrant, Dundi, the banyan of Mr. Peat and who also acted as Bailiff, attempted to seize the person of

1 Report, p. 22 ; Dacca Appendix, 8.

Jagannath but without success. What happened next is described in detail in the representation that was made to the local Council by Syed Ali Khan, the Faujdar of the city.[1] He states that one day he was sitting in his Dewankhana with some officers of his Court and several friends, when about noon, Dundi, the banyan of Mr. Peat, unexpectedly arrived on the scene and contemptuously asked Jagannath to get up. The Faujdar asked Dundi what the matter was and told him that if it was a warrant, it could have no power over servants of the Nizamat. It appears that the Faujdar said this according to written instructions from Muhammad Reza Khan, the Naib Subah, who had previously circularised the Faujdars that "no warrants or writs could operate upon the officers of the Nizamut, that this was the answer to be given to the officers of the Court ; and if they should still be unsatisfied, they should be referred to him,

1 Dacca Appendix, 8 ; Enclosure. I.

Mahomed Raza Cawn, for a further reply." To the Faujdar's query Dundi made no reply but all on a sudden about hundred men, with clubs in their hands, entered, and Dundi ordered them in a loud voice to seize Jagannath and take him away. Jagannath was thereupon dragged away but he somehow escaped from their hands and fled. In the meanwhile several of the Sepoys attached to the Faujdari arrived there and asked Dundi and his people what they were about. But mere filthy abuse was all that they got in reply. About this time more men began to arrive and the people of the Faujdari, apprehensive that something serious might happen, shut the gates of the house. Upon this bricks and stones were thrown from without and the palanquin house, which was outside, was plundered. Mr. Peat himself now appeared on the scene, having forcibly broken the gates open, and emboldened by his presence his people now began to strike blows with their clubs right and left. In course of the fray, the Faujdar's father was struck with a sword by Dundi

and Mr. Peat himself seriously wounded his brother-in-law with a pistol shot. Mr. Peat's people then dispersed themselves in the house, went into the quarters of the mutsuddies that were behind the Dewankhana, and plundered them of everything. The Faujdar loudly demanded enquiry and justice.

As is to be expected, Mr. Peat's version of the affair was different. On the same day, (20th September, 1777), he wrote to the Dacca Chief: "An arrest was made this morning, under my directions as Deputy Sheriff, on Jaggernaut Dewan. Resistance was made, and the man is still not taken. I was attacked by a man with a sword and a target, and in my defence shot the man." In another letter to Captain Cowe Mr. Peat wrote: "A man being this morning arrested by my orders on the process of the Court, he has made great resistance, and assaulted me with a drawn sword and target, on which, in my own defence, I shot him. I therefore, as Deputy Sheriff, request you to send proper

assistance to secure him; as your now knowing of the rescue, will make you a party if you do not assist. In the meantime I also request you will send Sepoys to guard me if you think proper."[1] In a letter to the Governor-General and Council the Sheriff also spoke of resistance to arrest and a forcible rescue and in a subsequent letter Mr. Peat further charged Jagannath with having contemptuously torn the writ which authorised the arrest. Very naturally he said nothing with regard to the disturbances alleged to have been committed by his own men.

On receipt of these intimations the Dacca Council promptly stationed a military guard over Mr. Peat's house, as well to secure him from molestation as to prevent his escape in case the man he shot should die, and further detached a reinforcement of the militia to the Faujdar to keep the peace of the city. A surgeon was sent to examine the wound received by Mir Hossein, the

1 Dacca Appendix, 6; Enclosures, 2 and 3.

brother-in-law of the Faujdar, and an intimation of the whole affair was sent to the Governor-General and Council. The Dacca Council also made it clear that should Mr. Peat produce or send any of His Majesty's writs to them, formally requiring their assistance, they would certainly consider themselves bound to comply.[1] In the meanwhile the Sheriff also addressed a letter to the Governor-General and Council in which he stated: "Having learnt from Dacca that resistance has been made against the execution of a warrant of arrest, duly issued from the Sheriff's office against Jaggernaut Dewan, and that the said Jaggernaut Dewan has, with an armed force, been rescued from the officers of the Sheriff; I desire that assistace to which, by his Majesty's Charter, I am entitled, and hope that you will give immediate orders accordingly, and dispatch them as soon as possible." And as it was apprehended that Mr. Peat might suffer an attack in his house, the Sheriff also asked for the

1 Dacca Appendix, 6.

protection of the Company's forces for him.[1]

The Governor-General and Council very much approved of the steps already taken by the local Council and directed that all assistance should be given to the Sheriff's officer in executing the warrant on Jagannath Dewan. The guard over Mr. Peat's house was to be continued so long as the wounded man remained in danger of his life. In case he died Mr. Peat was to be sent under a guard to Calcutta, together with all the persons concerned in the late fray. The Dacca Council was also ordered to make an enquiry about the persons who were present at the time when the disturbances occurred and to take their depositions in writing. An enquiry in particular was to be made as to whether Jagannath himself was in any way concerned in the fray, and in case he was, he also was to be sent under a guard to Calcutta.[2]

1 Dacca Appendix, 6 ; Enclosure, 4.

2 *Ibid*, para 2.

In the meantime, as a result of the late fray, criminal administration in the city of Dacca came to a standstill and the local Council was wholly at a loss how to act. About this time an application was made to the Faujdar to issue his process against certain persons who were alleged to have murdered not only their master but also his mother and two principal servants but the Faujdar positively declined to take any measures for apprehending the murderers. To the exhortations of the Chief the Faujdar's reply was : "Do you yourself decide, sir ; when the Phousdarry is reduced to such a pass, that Doondy, Mr. Peat's Jemmadar, can, through malice, and without setting forth his business, disgrace and dishonour the Pashcar of the Phousdarry ; and that the said gentleman shall, without enquiry and examination, come with his people to my house ; that the Jemmadar shall cut my father in the head with a sword, and the said gentleman wound my brother with a ball from a pistol, how is it possible for me to enter upon the functions of the

Phousdarry? If all this has befallen me, notwithstanding my being free of fault, and my having not yet issued any orders from the Phousdarry, most undoubtedly, in conducting the business, complaints, just or unjust, may be preferred; under which case, should a warrant come against me, it may probably be with difficulty that I preserve my own life. It is in the hopes of favours, and protection and preferment, that my faithful services have ever been at command, not expecting that the reward for service should be such as I now experience; and as to the future, until I am satisfied in this point, I cannot discharge my functions."[1]

The perturbation of the Dacca Council was further increased when they learnt the contents of a letter that came to Captain Cowe from Mr. Justice Hyde near about the same time. In this letter, Mr. Hyde wrote: "By what I have heard, I presume you will receive orders by the post tonight, to give assistance to Mr. Peat

1 Dacca Appendix, 7; Enclosure, 5.

in arresting again Jaggernaut, who has been rescued ; and in so doing, it is lawful to break open doors, and he is not now to be bailed, but must be sent to Calcutta····· If the man who was shot dies, I have no doubt you will give sufficient protection to Mr. Peat, who, in that case, must come to Calcutta for his acquittal. If he does not die, and any body should advise or order you to bring him, (I mean Mr. Peat) hither against his will, without a warrant from some of the Judges, I (only because I should be very sorry that any gentleman, who meant only to do his duty, should suffer any inconvenience from it) caution you to beware ; for the imprisoning an officer of the Court is a Contempt, for which the punishment is imprisonment as well as fine. If any person desires you to imprison Mr. Peat, I should advise, that you ask a bond of indemnity, in a large sum ; because it is probable he would recover a very large sum in an action. I beg the favour of you, for fear my letters to him should not be suffered to come safe,

to tell Mr. Peat, that I highly approve his conduct, and doubt not he will receive proper support from the Court, whose officer he is."[1] Mr. Hyde did not care to wait for the evidence but decided in advance that Mr. Peat deserved an acquittal and that his conduct was entirely praiseworthy. The "judicial" frame of mind that the Judge exhibits is noteworthy and explains, to some extent, the arrogance and superciliousness with which the officers of the Court often dared to act.

However, the threat in the letter was unmistakable and the Dacca Council wrote frantically to their superiors for instruction. At the same time they could not sit idle, as the practical relinquishment of his duties by the Faujdar had brought on a very critical situation. Jagannath had surrendered himself to the Council and with a view to prevent any further disturbance they attempted to come to an accomodation with Mr. Peat. The Provincial Council accordingly wrote to

1 Dacca Appendix, 7; Enclosure, 4.

him: "Jaggernaut Dewan has this day surrendered himself to us. He positively denies having seen any writ of the Supreme Court; so, if there was no arrest, there could be no rescue; nor can we learn either from himself, or any other person, what suit has been instituted against him. Being a servant of the Nizamut, he denies the jurisdiction of the Supreme Court; and we apprehend, is therein guided by the orders of his superiors. He has tendered us security, if required, to appear before any of the Country Courts—We, on our part will deposit with you any sum you shall specify, to answer the demand against him, if he is hereafter adjudged liable to the jurisdiction. .....We, holding ourselves answerable to produce the person of Jaggernaut whenever he may be required, do wish and request that no further process may be made or measures taken, till both you and we receive the orders of our respective superiors." Mr. Peat, however, was not the man to agree to such a proposal and wrote in reply:

"I have not the least doubt that the legal arrest of Jaggernaut Dewan, and also his contemptuous tearing of the writ which authorised that arrest, and the rescue which he effected afterwards, notwithstanding all my efforts to prevent it, will be fully and satisfactorily proved at a proper time and place. .....I cannot accept of any other security than what the writ authorises me to take, which in this case must be the bond of the defendant himself, and two other responsible persons, in the sum of ten thousand rupees."

Jagannath, however, stoutly denied that he ever saw the writ or that he knew anything about the complainant or the subject of the complaint. Thereupon the Council wrote to Mr. Peat that if he would furnish Jagannath with an authenticated copy of the writ, actually issued against him, he was ready to provide the security required, reserving to himself, however, the right of pleading to the jurisdiction. But Mr. Peat would have none of it and replied to the Council in

the following words: "In regard to what Jagannath says about never seeing the warrant, I do not think it right to take any notice, being convinced of the legality of the arrest; and his requesting to have another copy of the writ served, is a piece of chicanery, which I am sure you, gentlemen, do not expect me to acquiesce in."

The Council was very much concerned that their proposal, which was solely conceived with a view to prevent further disputes and tumults in so grave a crisis, should be so unceremoniously rejected and thought that the consequences might be dreadful "if the Phousdar should think it his duty to be equally pertinacious in supporting the jurisdiction of his own court." The Dacca Council, therefore, "considering themselves on the one hand as holding the administration of the province, and on the other as holding the highest obedience and veneration to His Majesty's Court," resolved to send two of their members to wait on the Deputy Sheriff and try to arrive at a settlement,

as the most effectual mode, that occurred to them under the circumstances, of preserving the tranquillity of the province. Negotiations followed but from the beginning Mr. Peat was adamant and insisted on his own terms. He refused to receive the affidavit of Jagannath, "That he never saw the writ—That he is to this hour unacquainted with the nature of the complaint, or the name of the person complaining against him," on the ground that "he himself was a party concerned, and that being convinced that the writ had been legally served,.....he was sure he (Jaggernaut) would perjure himself." The result of the whole matter was that the Dacca Council had to yield to Mr. Peat's terms and bail bonds were executed by Jagannath and the two members of the Council, Messrs. Shakespeare and Holland.

On being informed of what the Dacca Council had done in the matter, the Governor-General and Council wrote : "We much commend the prudence and discretion which you have shown in all your proceedings

respecting the late unfortunate disturbances created by Mr. Peat at Dacca, and approve of your having become bail for the appearance of Jaggernaut Dewan. We observe, however, some parts of the Phousdar's declarations entered on your proceedings, which make us apprehend, that he might still be induced to oppose the officers of the Supreme Court on any similar occasion ; we think it necessary therefore to prevent any further contests of this kind, by desiring that you will recommend to the officers of the Phousdarry Court, when any writs or warrants shall be issued against them in future, to comply or submit to them without resistance, but to give immediate intimation thereof to us, through the channel of the Board, that we may direct the Company's Council to plead to the jurisdiction of the Court ; as it will be impossible without such a process, to ascertain whether they are objects of its jurisdiction, or not. In all cases where suits shall improperly have been commenced against them, they may be sure

of obtaining such satisfaction or damages as the nature of the case will admit." The Governor-General at the same time informed the Naib Subah of the directions that had been sent, explaining the circumstances and assuring him that it was not meant, by this advice "to make any declaration whatsoever concerning the respective rights or jurisdiction of the Nizamaut or the Supreme Court of Judicature."[1]

The next point to be noticed is a letter, dated the 1st October, 1777, written by Mr. Peat to the Dacca Chief in which he asked that the armed guard placed over his house might now be taken away, as the wounded man was neither dead nor likely to die. The Chief replied that the last medical report was unfavourable so that nothing could be immediately done. He, however, gave an assurance that he would again consult the two surgeons next morning and that he would be extremely happy if their report would justify him, consistently with the orders under

1 Dacca Appendix, 8.

which he acted, in removing the Sepoys from Mr. Peat's house. This time the surgeons declared the wounded man to be out of danger, and as the Governor-General and Council had directed that in case of Mir Hossein's recovery it must rest with him alone to take such course as the law of England directs, the restraint on Mr. Peat was removed.[1]

The sequel is not known. The Report states : "What redress was ever obtained, or what mode was pursued to obtain any, after it was left to the parties to pursue their own measures, does not appear from any public records in possession of your Committee, or from other sufficient evidence. They perceive only, from an entry in the general account of losses and expences, stated to have arisen to the Company from the proceedings of the Supreme Court of Judicature since its first institution, that the sum of 5,273 current rupees had been paid to Syed Ally Cawn, the Phousdar, and 200

1 Dacca Appendix, 9.

C. Rs. to Jaggernaut Dewan, making about £550, for expences incurred by them. It behoves your Committee to mention, that in all the materials laid before them by the East India Company, in the papers transmitted by the Judges to His Majesty's Secretary of State, and referred by the House to this Committee, they do not find any representation or remarks from all or any one of them, on the subject of the dispute above related."[1]

Such was the Dacca Case which had brought on a direct collision between the Supreme Court and the Nizamat, and which, but for the tact and moderation displayed by the Dacca Council, might easily have led to dreadful consequences. Where eminent lawyers differ, it would be rather presumptuous on our part to say anything as to whether it was the intention of the Act or the Charter that the officers of the Nizamat should be subject to the jurisdiction of the Supreme Court. But it will be admitted on

1 Report, p. 26.

all hands that, as a matter of expediency, the Court should have proceeded with due caution and deliberation. As the Dacca Council put it: "It touches to the very existence of a Government throughout the province, that the jurisdiction of the Phousdar and his superior, the Naib Suba, be admitted free from all doubt or ambiguity. How otherwise can it be supposed a Phousdar will perform any function of his office? how presume to execute a criminal convicted and sentenced to death by the established law of his Government and his religion, if he is liable himself to stand to actions of damages, as in the present suit against the Dewan, or to answer to a criminal accusation for any punishment he may inflict, before the Supreme Court of Judicature, whose judges are bound by their oaths to judge according to the laws of England?"[1] Besides that of Jagannath Dewan the Dacca Case itself furnishes another instance as to how an officer of the Faujdari had to stand to an

1 Dacca Appendix, 8

action in the Supreme Court for having done what he was duty-bound to do. We have already mentioned the case of Mr. Ford who had been imprisoned by Mirza Mazoom and who was released at Mr. Peat's intervention. Now it is on record that the said Ford filed a complaint against the Daroga in the Supreme Court for assault and false imprisonment, and Sir Elijah Impey ordered a summons to be issued against the said Mirza Mazoom.[1] The embarassments to which the officers of the Faujdari and business in that department were put by such processes cannot be better described than in the words of Syed Ali Khan, the Faujdar of Dacca: "In deciding on the business of two people, between whom there is a dispute, it being impossible for both to affirm the truth, I must in justice decide in favour of the party which appears to have most right; but then, when will the other be satisfied? His cry will be, that there is

1 Dacca Appendix, 12.

injustice done ; and in case he goes to complain in Court, and brings up a warrant against me, I must go and answer to it, and until such time as the truth or falsehood of it shall be enquired into, it will be necessary that the Hakim remains a culprit, and in becoming a culprit, he must appear before the vulgar, in many respects of no consequence, credit, or authority, and his order will never be depended on, or attended to by any one. Supposing it is proved in Court, that a complainant has preferred a false complaint, he is punished, and made to defray all charges attending it ; but in the meantime the person who has acted in the function of his office, will be disgraced and degraded in the light of society..... Men are liable to error ; even in a Court errors may happen from neglect of pleading, or deficiency of proofs, and it may be corrected ; but in case a person acting in his office is to be liable to a warrant, it is a very difficult situation, and it is a cause of levity to the concerns of

Government."[1] All this is plain and obvious but the Court do not appear to have bestowed much attention on this aspect of the question. Their obsession seems to have been that the Nizamat was being put as a cloak to screen criminals and that the subterfuge must anyhow be broken through, blinding them to the very serious consequerces that their processes produced.

The Dacca Case also shows how sometimes the situation was further aggravated by the thoughtless arrogance of the Court's officers and the superior air of authority that they adopted in their dealings with the Company's servants. A dispassionate study of the records dealing with the proceedings of Mr. Peat at Dacca leaves little room for doubt that his main concern was to flaunt his own authority and increase his own business. He had ostensibly been sent there to help the course of law and justice and it seems that the purpose might well have been served if Mr. Peat had condescended to act

1 Dacca Appendix, 10.

in co-operation with the Dacca Council. When his banyan Dundi failed to effect the arrest of Jagannath, he might easily have applied to the Council for assistance and there cannot be any reasonable doubt that the assistance was sure to be forthcoming, because we find that even after the disturbances in the Faujdar's house had taken place and before they had received any direction from their superiors, the Dacca Council recorded it as their opinion that "should Mr. Peat produce or send any of His Majesty's writs to us, formally requiring our assistance, we certainly shall consider ourselves bound to comply." But such a plain and obvious method did not suit Mr. Peat. Instead he went to the Faujdar's house with a rabble, broke open the doors, plundered the outhouses, staged an arrest and complained of a rescue, severely wounded several respectable gentlemen, and brought open disgrace and dishonour on the highest native functionary of the city, incidentally bringing the entire criminal

administration of the provincial area to a standstill.

Mr. Peat's version of the incident was, of course, different and, as was to be expected, he took his stand on the alleged legal arrest and the illegal rescue. Mr. Peat asserted that on the writ being produced Jagannath contemptuously tore it off and though Dundi and his men had put him under arrest, he was forcibly rescued by the Sepoys attached to the Faujdari. On the other hand, the Dacca Council wrote: "We must observe that Jaggernaut himself, Syed Allee Cawn the Phousdar, and every other person present, who have appeared before our Board, persist in affirming that no writ or warrant whatever was shewn to them; and we believe it to be an established rule in arrests at the suit of the subject, that the Sheriff's officer is to shew at whose suit it is, and at what Court the writ issued, and for what cause, or otherwise the arrest be made by the Sheriff's sworn Bailiff, whose powers and authorities shall be known to the

prisoner. Much may depend upon this, because if the arrest is not effectively made, there can be no rescue."[1] But the rescue, whether illegal or not, was a fact. Some of the Sepoys had compelled Dundi and his men to let Jagannath alone and thereafter removed them to the guard-room.[2] And it also appears from the directions sent by the Governor-General and Council to their subordinates at Dacca that they, too, had got the impression that resistance to the Court's process had actually been offered. Further, the Dacca Council's reference to the written order of Muhammad Reza Khan, as to how the officers of the Nizamat should act in case writs of the Supreme Court were sought to be served on them, also suggests the same conclusion. But the entire body of evidence carefully collected by the Dacca Council lend absolutely no support to Mr. Peat's contention that the warrant had been produced, or that he had fired in self-defence.

1 Dacca Appendix, 8.

2 *Ibid* 9; the deposition of Kali Charan, a Sepoy of the Faujdari.

Inspite of all that can be put forward in favour of Mr. Peat, it seems to us that the similarity, in some respects, between this case and that of Mirza Juan is unmistakable.

A clear light is thrown on Mr. Peat's character and veracity by the monstrous charges that he subsequently brought against the Faujdar and the Dacca Council. One of his assertions was that at Dacca "Justice had been frequently and notoriously set up to sale, to both the litigant parties in a suit, and the profits of such unjustifiable transactions actually farmed out." Mr. Peat, however, could adduce no proof in support of his contention. On the other hand, Mr. Boughton Rouse states in his evidence that "he not only does not know of any such practice having existed during the whole time he held the chiefship of Dacca, but on his conscience believes, that such a supposition is totally false. Had there existed such a practice, he thinks it must necessarily have come to his knowledge, and most probably would have been stated in the petitions of

appeal, of which many are recorded in the Dacca Consultations, without the suppression of any circumstance contained in them."[1] Another of Mr. Peat's charges was that the Faujdar's Court had been notorious for its partiality and denial of justice. As an instance, he asserted that "a man named Khyroo, prosecuting in that Court for a rape committed upon his wife, was not only denied justice, but suffered much oppression for having made such complaint." With regard to this complaint as well Mr. Rouse stated that "he never did hear it, nor was the name of Khyroo known to him, till he took pains to make enquiry concerning him, after the fray had happened between the officers of the Supreme Court and those of the Phousdarry ; that he never did hear the smallest intimation concerning any injustice done to Khyroo, nor of its making a great noise in the city of Dacca, or causing discontent amongst the inhabitants."[2] We are

1 Report, p. 29.
2 Report, pp. 27, 28,

further told by at least two witnesses that Syed Ali Khan, the Faujdar, was "a man of birth, education, and of a high principle of honour" and Captain Cowe affirmed that he had never heard of any discontent at the way justice was administered by him.[1] There can be little doubt, therefore, that Mr. Peat's assertions were false and it may well be that these attempts to blacken the records of his opponents were deliberately resorted to, because Mr. Peat realised the weakness of his own case.

Indeed, in a sense, most of his activities at Dacca were illegal. As we have already pointed out, the combination of the functions of an Attorney and a Deputy Sheriff in the same person was illegal and under the direction of the Governor-General and Council the Dacca Council compiled a long list of cases in which Mr. Peat served in both the capacities. [2] In fact, it appears that in the crucial case of Jagannath Dewan, wherein

1 Report, p. 29.
2 Dacca Appendix, 11.

his activities as Deputy Sheriff produced such a great disturbance, he was the Attorney as well. It would possibly be going too far to say that the Judges knowingly and deliberately effected this illegal combination of functions in Mr. Peat. The more reasonable supposition is that the obscure Statute of the reign of Henry V must have escaped them but they should have foreseen that the vesting of such wide powers in the hands of a young man of 20, stationed in the mofussil, was unsafe and very likely to lead to indiscriminate abuse. But we find, on the contrary, that even when there were complaints, Mr. Hyde did not think it necessary to make an enquiry or call for evidence but decided in advance that the Court's agent could do no wrong.

It appears to us that the Dacca Case furnishes a very clear proof of the Governor-General's complaint that the Court never cared to suit their procedure to the exigencies of time and place. Over-conscious of their own dignity and the sanctity of their

processes, the Judges very often failed to take a broader view of their responsibilities with the result that the Supreme Court soon became something like a deadweight on the administration of the Company. The records give the unmistakable impression that the Governor-General and Council, as also the Provincial authorities acted, in most instances, with reasonable restraint and admirable moderation but their efforts were almost always frustrated by the obduracy of the Court and its numerous myrmidons. The responsibility for the maintenance of law and order was theirs, while the Judges sat tight on their dignity and threw obstacles after obstacles on the path of the Government. At last the hands of the Governor-General and Council were forced and the crisis of the Kasijora Case arose.

CHAPTER V

The Kasijora Case

The quarrel between the Court and the Council, as we have said, at last came to a crisis in the well-known Kasijora Case and made intervention by Parliament more or less inevitable. The Council openly resisted the process of the Supreme Court, justifying their action on the plea of state necessity. The opposition, if not strictly legal, the Council considered "as justifiable upon the necessity of the circumstances" and appealed to Parliament for indemnity.

The case arose in connection with the claims of Kasinath, a rich merchant of Calcutta, against Sundar Narayan, the Zamindar of Kasijora. Kasinath, it appears, had been security for the rents payable to the Government and manager of all affairs relative to the Zamindary of Kasijora for about five years, and in consequence "several accounts and cross claims between him and

Government on the one hand, and between him and the Raja and tenants on the other" had arisen. The matter was enquired into by the Chief of Burdwan whose report proved unfavourable to Kasinath who was adjudged a debtor to the Government to the extent of Rs. 72,558. 9. 7. For the recovery of this balance Kasinath was arrested and put under confinement and he, on his part, applied for and obtained a writ of Habeas Corpus from the Supreme Court. It appears, however, that the return to the writ proved essentially defective and time was given, by consent of parties, for making one more regular and legal. "In this interval, upon a very respectful petition being delivered to the Governor and Council from Cossinaut Baboo, offering to deposit the balance demanded, to await the final judgment of the Governor-General and Council, and requesting a further and more exact examination of accounts, the parties agreed to suspend all further coercive proceedings on either side, Cossinaut Babu actually depositing the

sum in dispute, and the Governor and Council engaging for the fair and full investigation demanded in the petition." [1]

This was in June, 1777, and the matter dragged on for about two years till at last Kasinath presented another petition to the Governor-General in Council on the 25th of May, 1779, requesting that the case might be speedily disposed of. Thereupon the Superintendent of the Khalsa records was ordered to examine the accounts and submit a report. "On the 28th of the same month, this Report was accordingly made by the Superintendent, accompanied with two abstracts of the accounts current between the parties. This mode of adjusting the accounts was objected to by Cossinaut, and the matter was actually under examination when Cassinaut, upon the 13th of August, 1779, commenced a suit againt the Rajah of Cossijurah, in the Supreme Court." On reading the affidavit of Kasinath, Mr. Justice Hyde ordered that "a Capias do issue

1 Report, p. 30.

against the Rajah Soondernarain, and that a clause be inserted in the same, authorising the Sheriff to take bail in the sum of three hundred thousand sicca rupees." [1]

In a letter, dated the 4th September, 1779, Mr. Peiarce, the Collector of Midnapur, informed the Governor-General and Council that Kasinath had procured a writ from the Supreme Court and that an officer of the Sheriff had arrived for the purpose of serving it on the Raja of Kasijora. In consequence the Raja had concealed himself and the business of collection was suffering heavily. Mr. Peiarce requested that directions might be given to the Law Officers of the Company to defend and answer to the suit against the Zamindar so that he might once more be at liberty to pursue his necessary duties.[2]

This letter of Mr. Peiarce was submitted by the Council to the Advocate General, Sir John Day, for his considered opinion "on the subject of the process which had

1 Cossijurah Appendix, 2, 3.
2 *Ibid*, 4.

issued from the Supreme Court against the Raja of Kasijora" upon the best consideration that he could give to the subject. The Advocate General gave it as his opinion that the Legislature had marked the boundary of the jurisdiction intended to be given to the Supreme Court "with such precision that it will not occur to a common understanding, how a doubt could ever have existed with respect to its extent." He said : "There is not anything that can lead me to think it was the intention of the Legislature, that it should in any case extend to the Zamindars of these provinces—Neither does it appear to me, that the precautions taken to prevent the issuing of process against those whom the Act has not subjected to the jurisdiction, which in framing their rules of practice, under the powers given them by the Charter, the Judicature have adopted, form by any means a sufficient barrier against the many injuries that may arise in cases, such as that before me, and in many others, as well to the public revenue

as to the peace and security of the mass of the people, who, though exempt from the authority of our laws, and the jurisdiction of our Courts, have, upon the ground of policy, justice and humanity, an unquestionable title to our protection." The Advocate General further remarked: "In a choice of difficulties, it is part of wisdom to encounter the lightest; and when it shall come to a question, whether the few remaining rights of a people, to whom we have left but little, shall be invaded? the national character lowered, the measures of government impeded, and the most promising resources of the State injured and endangered, or the rules and practice established by the Judges, in some cases, that are more than doubtful, disregarded; I am bold to affirm, that it will be the duty of the Governor-General and Council (attending to the great and important task reposed in them) to hazard the latter, and leave the case, under all its circumstaces, to justify them to the Company and the Nation." His advice accordingly was:

"That the Zemindar have notice, that not being subject to the jurisdiction, he shall not appear, or plead, or do or suffer any act which may amount on his part to a recognition of the authority of the Judicature, as extending to himself;" and also "that in all similar cases, as well as in the present, the power of Government shall not, if called upon, be employed in aid of the Judicature, but that they be left to their own means of executing their process, and thus render themselves alone responsible to the State, for having (should such be the event) unnecessarily hazarded the dignity and authority of the King's Judicature, by exposing its process to contempt, and its officers to resistance and repulse."[1]

As Sir John Day remarked later on,[2] the attitude, that he, in this instance, advised the Council to adopt was to be one of "strict neutrality." But such a position was clearly inconsistent with the Council's responsibility

1 Cossijurah Appendix, 5.

2 *Ibid*, 9.

for the security of the people and the tranquillity of the provinces, and the so-called line of neutrality had soon to be transgressed. According to the advice tendered by the Advocate General the Governor-General and Council sent the following directions to the Collector of Midnapur: "That the Zemindar have notice, that not being subject to the jurisdiction of the Supreme Court, he shall not appear or plead, or do or suffer any act which may amount on his part to a recognition of the authority of the Judicature, as extending to himself. If, in consequence of any resistance offered to the Sheriff's Officer, application should be made to you by him for military assistance, you are not to grant such assistance, either in this or in any other instance, but to report the circumstances of the case to us, and wait our orders."[1] But it was idle to expect that such an attitude could be maintained for long and circumstances soon arose which

1 Cossijurah Appendix, 5.

forced the hands of the Council and brought on a direct clash.

The writ of Capias issued against the Raja having been returned as unexecuted, another writ was issued by the Supreme Court "to sequester the lands and effects of the Raja, to compel his appearance to the action." Thereupon a party of men, headed by a European Serjeant and Gokul Sarkar, a *gomastha* of Kasinath, arrived at Kasijora and attempted to set their seal on the Raja's house. It appears that the Raja's servants opposed the party and in consequence they temporarily retired, asking in the meantime for reinforcements from the Sheriff. About ten days later the reinforcements arrived and what followed next is thus described by the Raja of Kasijora: "Notice arrived that Europeans and Sepoys were despatched from the Adaulut, and with powder and shot were coming to fight. Your petitioner told his servants, 'Go, and with empty hands claim the protection of the gentlemen of the great Council; and though they may kill two or

three of you, say nothing ; for this reason, because we are poor Zemindars, and unable to contend with the people of the great Adaulut'. The Serjeant, etc. (the people first sent) having received this account, at the instance of the said Gocul, at midnight, having got ready his people, beat and bound the Doorwan and Chokeydars that guarded the house, and confined them ; on this account all the servants of your petitioner, with the fear of being disgraced, absconded. They then, with the said Gocul, broke the door and entered the house and zenana, and plundered the house and effects. Besides which, in the morning fifteen Europeans and twenty-five Sepoys, armed with English muskets, and forty peons (a few of them belonging to the Supreme Court, and many to Cossinaut) arrived, and surrounded the house, and having taken Shooboo Sing and other servants of your petitioner, they placed a guard over them, and disgraced different people, and wounded and confined others, and sequestered the remainder of the effects, and sealed the door ;

even this much did they do, that they entered the house of the Takoo Jew (Thakurji ?—idol house) and spit in it, and also stripped it of the gold and silver plate and ornaments."[1]

As is to be expected, the account of the affair given by the representatives of the Sheriff is quite different and naturally they say nothing as to the atrocities alleged to have been perpetrated by them. They all insist that they had entered the inner apartments of the house only when the Raja and his servants had left the place with most of the effects of their own accord. William Findlay, who appears to have been the head of the party sent by the Sheriff to sequester the Raja's lands and effects, narrates in detail as to how he was prevented from serving the writ on the Raja and affixing the seal on the Raja's house and effects by the servants of the said Raja. He goes on to say that it was only when he was informed that the Raja and many of his people had

1 Cossijurah Appendix, 7.

quitted the house that he could affix seals on some of the doors and "finding a number of armed people outside the house, he, being apprehensive of danger from them, seized them, took from them their arms and confined them until daylight, when he set them at liberty." Mr. Findlay also says that "upon being informed that the Raja's Dewan was the most active and vigilant in raising and collecting the country people together to drive him off the premises, he, in order, as far as he could, to prevent further disturbance, seized the said Dewan and caused him to be confined." This is all that he would admit and the affidavits sworn by some other members of the party also tell practically the same story.[1] On the other hand, the complaint is put forward that they had been reduced to great hardship and misery owing to the proclamation made by the servants of the Raja, forbidding any of the inhabitants to furnish provisions or necessaries to the officers of the Sheriff. The

1 Cossijurah Appendix, II, 16, 17.

records that we possess can hardly be regarded as decisive, one way or the other, but from what we have already seen of the bailiffs and peons of the Supreme Court, we are inclined to think that the matter might not have been as simple as Mr. Findlay and his men would have us believe, particularly as there had admittedly been open resistance by the Raja's men.

Whatever that might have been, the Governor-General and Council had been informed on the 29th of November by Mr. Naylor, the Company's Attorney, that "the Sheriff has dispatched a considerable force to Cossijurah, consisting of Sepoys, and some European sailors, to the number of sixty persons; that they are completely armed, and instructed to employ their force in case of any obstruction being made to the execution of the process with which they are charged." Mr. Naylor was personally examined by the Council the next day and an order was immediately sent to Lieutenant-Colonel Ahmuty, the Commander at Midnapur,

to the effect that, for the preservation of the peace and tranquillity of the country, the Commander would detach a sufficient force from the battalions under his command, intercept and apprehend the party sent by the Sheriff and detain them in his custody until further orders. Accordingly Lieutenant-Colonel Ahmuty "detached two companies under the command of Lieutenant Stephen Bomford, with 24 rounds per man, with orders to proceed to the assistance of the Rajah of Cossijurah, to seize all such persons, Europeans as well as natives, who were either rioting or plundering, and also to surround them so as to prevent bloodshed, which when done, he was to disarm them and secure them in the Cutcherry at Cossijurah, and wait for further orders." Lieutenant Bomford carried out his instructions to the letter and, under the direction of the Governor-General and Council, the prisoners,

1 Cossijurah Appendix, 6.

"one hundred in number, all well armed," were sent to Calcutta under a proper guard.[1]

The Governor-General and Council thereupon sought the advice of the Advocate General as to how they should deal with the prisoners. Sir John Day observed: "Since my first report in this cause has been given in, an unlooked for situation has occurred, by which the Board have been compelled to pass the line of neutrality I had first suggested: It does not, however, appear to me, how (situated as they were) any other course than that they have taken, can be pursued, without a desertion of their first duty, the protection of those whom they were appointed to govern." Accordingly, "the question had so far changed its aspect, as to be a question of government and political necessity, not of law." He further said: "This having, however, been the first attempt to throw the country into confusion, under colour of extending and maintaining the authority of our laws, that has regularly

1 Cossijurah Appendix, 8.

reached the knowledge of Government, and because, among other reasons which have their weight, I would try the effect of moderation ; and thus, in the event of a future aggression, leave the actors in this business and their employers, without excuse ; I advise, that unless a case shall come out, beyond expectation flagitious, all further proceeding, on the part of Government, be at this time relinquished." The Advocate General's advice was that the prisoners be instantly released and this was accordingly done.

Sir John Day also made it clear that his opinion on this matter as a whole was grounded primarily on the necessities of the situation, which, he thought, demanded and justified in this instance even a departure from the law as it stood. He wrote : "Every argument I have hitherto employed, the Honourable Board will observe, rather tends to encourage and justify the exercise of a spirited, liberal, and necessary discretion, by men filling, as they do, in critical times,

a situation of perilous responsibility, and for the prevention of a formidable and impending mischief, than to mark out to them a line of conduct, in which the law of England will bear them through; a strict adherence to which, and to its rules of practice (as it were the perfection of folly to hope they can ever take root here to the extent contended for) is therefore, in the opinion I have already given upon this subject, as well as in this, clearly and explicitly disclaimed."

"By the exercise of such discretion, something must be hazarded; but much more, both in point of personal honour and of public benefit, may be hoped for; and the actors and advisers, I am confident, will find their justification with their superiors, in the strong necessity of the case; their acquittal with the people of England, in the feelings and understandings of mankind; and, should that be necessary, their indemnity from consequences, in the benignity and wisdom of

Parliament."[1] This view of the matter, as propounded by the Advocate General, sets the issue in a clear and definite light. The main question, therefore, for us to consider in connection with the Kasijora Case, is not so much the legality of the proceedings of the Council as the adequacy of the reasons for their conduct.

It appears that the Governor-General and Council also issued a notification "to all landholders to inform them that they were subject to the jurisdiction of the Court only if they were servants to the Company or had subjected themselves by their own consent to the jurisdiction, and that if they did not fall within either class they were to pay no attention to the process of the Court."[2] Sir James Stephen remarks: "The Court held, as they could not but hold, that every one in Bengal, Behar and Orissa was subject to their

1 Cossijurah Appendix, 9.

2 Report, p. 32.

jurisdiction, to this extent that he was bound, if sued in the Supreme Court, to appear to plead to the jurisdiction. The whole contention of the Council was that this was not so, and that if any one not being an Englishman born, or in the pay of the Company, was sued in the Supreme Court he was justified in taking no notice of its process. In other words, every defendant was to judge in his own case whether he was subject to the jurisdiction of the Supreme Court or not, residents in Calcutta only excepted. This was equivalent to confining the jurisdiction of the Court by force to the town of Calcutta."[1] But we find it difficult to accept this as a correct statement of the position. Not only there is no evidence that the Council had hitherto encouraged anybody to defy the process of the Court; on the contrary, the records show that in several cases in which their advice was sought they uniformly counselled submission, helping

1 Stephen, *op. cit.*, vol ii, p. 214.

the parties merely with legal assistance and only in a few cases paying them compensations, where extraordinary hardness and injustice seemed to justify such a step. It was only when they felt that the indiscriminate (in the view of the Council and the Advocate General) issue of the processes of the Court was creating a situation in which their responsibility for the protection of the people could not be adequately discharged that they were compelled to adopt such a drastic remedy. Whether the situation was actually such as they averred is a different matter but it is clear that Sir James Stephen's statement is hardly fair to the Governor-General and Council.

However, as can be easily seen, the matter could not end with the release of the prisoners and we find that on the 18th of January, 1780, "an attachment was moved for in the Supreme Court, against Mr. William Swainston, Assistant at Midnapore, and Lieutenant Bomford, for a high contempt

of Court, in the part they took in the rescue of the houses, lands, and effects of the Rajah of Cossijurah, and of the subsequent conducting of the prisoners under a strong guard to Calcutta. It was also moved that rules might be made against Warren Hastings and Richard Barwell, and Mr. Naylor, to answer certain affidavits of the Sheriff's Officers and others." The Chief Justice did not grant an attachment in the first instance but issued a rule to show cause why attachments should not issue against Mr. Swainston and Lieutenant Bomford, and Mr. Naylor, and to answer the affidavits. The Governor-General and Mr. Barwell were not included in the rule but the Chief Justice ordered: "Let them be served with copies of the rule, that they may answer if they please, and let it be added to the rule, that the Sheriffs apply to the Governor-General and Council, and to each of the Council separately, for assistance in executing the rule, and let the Sheriffs deliver a copy of the last clause of the Charter by which

His Majesty requires them to give such aid." [1]

Accordingly the Sheriff wrote a letter to the Governor-General and Council requiring their assistance in serving the rules of the Supreme Court on William Swainston, Stephen Bomford and North Naylor. The letter was referred to the Advocate General, who, among other things, observed: "The conduct of Government has throughout this business appeared to me defensible, partly upon a ground of law, and partly upon the strong and irresistible necessity of the case; and the latter, which sustains it in its first opposition to the process of the Court, will justify such subsequent measures as the line which the Court shall take may render unavoidable: In a word, the question should be defended in all its parts and incidents, or totally and at once abandoned; for a partial and qualified

1 Cossijurah Appendix, 19. The case against Mr. Swainston arose out of the fact that he had accompanied Bomford when the latter apprehended the Sheriff's party.

defence, while it still leaves the question at large, operates to the humiliation of Government, by exposing those who have acted in the execution of its orders and in support of its authority, to the resentment of the Court, which may in this instance fall so heavily, as to go to the very existence of Government, by making it in future a matter of deliberation with the governed, whether it shall in any case be obeyed." The Governor-General and Council thereupon resolved: "That the Board will abide by the principles on which they have already proceeded in their resistance to the illegal acts of the Supreme Court of Judicature, and that they will inforce and defend the orders made upon those principles." [1]

Even before this, on the 10th of December, 1779, the Governor-General and Council had already sent an order to Lieutenant-Colonel Ahmuty to the effect that "if any Sheriff's officer, or person assuming that character shall serve any writ

1 Cossijurah Appendix, 18.

upon yourself, Lieutenant Bomford, or any officer, non-commisioned officer or Sepoy, of the detachment lately ordered to apprehend the party employed and acting under colour of a Sheriff's warrant, against the Rajah of Cossijurah, for any act done in consequence of our orders to you of the 30th November last, and shall attempt to arrest, and take you or him away by force, you do resist such attempt, and compel the person making it to depart from the limits of your command." [1] With regard to this order the Advocate General observed : "The wisdom of the Board had already seen, and with a spirited decision has taken, the only course which, consistently with its honour, the maintenance of its authority, and the preservation of the public peace, could be pursued with respect to the military acting under its orders." The serving of the rules on Mr. Swainston and Mr. Naylor, however, could not be avoided. Mr. Swainston, it appears, met the facts charged in Saunder's

1 Cossijurah Appendix, 10.

affidavit with a positive contradiction and nothing appears in the records to show as to how the matter ended. But with Mr. Naylor it proved otherwise and the proceedings againt him, as we shall see, were dragged on to a tragic end. And as regards the Sheriff's letter to the Governor-General and Council requisitioning their aid in the serving of the rules, no reply was sent and nothing was done. This was also in accordance with the advice of the Advocate General who wrote : "It does not appear to me, that there is anything directly addressed by the Judicature to the Board, which requires an answer,—An address to the former, from Government, would therefore probably find the fate of former communications, it would be transposed to a petition, and in that form would probably undergo, public and severe, because unanswered animadversion ; and to enter into any discussion or correspondence with the Sheriff, who only acts ministerially, were beneath the dignity of Government, and would only tend to entangle a matter

still more, which already teems with difficulties. I am, for these reasons, of opinion, that nothing, either verbal or written, shall, on the part of this Government, be addressed to the Judicature, or to the officer acting under its authority." [1]

The case against Mr. Naylor arose out of the affidavits of Hidaram Banerjee, banyan to Mr. Wroughton, Attorney at Law, and of Mr. Lewin, clerk to Harry Stark, Deputy Sheriff of the town of Calcutta. The former stated that Parbati Charan Ghose, the vakeel or agent of the Raja of Kasijora, informed him that he had instructions from the Raja to put in bail in connection with the case of Kasinath, in which the Raja was the defendant. Parbati Ghose wanted to be introduced to Mr. Wroughton for the purpose of signing a warrant of Attorney and to give instructions to put in bail. Accordingly Hidaram took Parbati to the office of the said Wroughton where Parbati, in his presence, signed a warrant of Attorney

1 Cossijurah Appendix. 20.

"to appear to the action, on behalf of the said Rajah Soondernarain, at the suit of the said Cossinaut Babu, as likewise a general power of Attorney, to authorise the said Geo. Wroughton to appear and defend all actions that might be brought in the Supreme Court against the said Rajah Soondernarain by any other persons whatsoever." Hidaram further stated that during the eight or ten days after the signing of the warrant of Attorney he frequently requested the said Parbati to give him the names of the bail but under one pretext or another he delayed from day to day, till at last he requested Hidaram to get the warrant of Attorney back, "because Richard Barwell, Esquire, and Mr. North Naylor, were very much displeased with him for signing the warrants of Attorney, and would not allow him to put in bail to the action; and that the said North Naylor in particular was very severe upon him, and threatened and called him a number of abusive names, and told him, that if he did not get the warrants of

Attorney back from the said George Wroughton, that he the said North Naylor would write to the said Rajah Soondernarain, to get him the said Parbati Churn Gose turned out of place." Hidaram also said that after this the said Parbati had made frequent applications to him to get the warrants back and "always urged, that the said North Naylor and Richard Barwell prevented him from putting in bail, and ordered him to get back the warrants of Attorney." He believed that neither of the warrants of Attorney had yet been delivered back. [1]

Mr. Lewin stated that on or about the 25th of November, William Saunders had been sent to Kasijora to the assistance of William Findlay, with about sixteen Europeans and a considerable number of peons; that on the 27th of the same month, to the best of his recollection, and positively before the 30th, Mr. North Naylor came to the Sheriff's office and made various enquiries

1 Cossijurah Appendix, 14.

regarding the party sent to Kasijora and Mr. Lewin further stated "that the said North Naylor seemed desirous of knowing the particulars of this business, and the number of men sent upon the occasion aforesaid, and verily believes that it was not mere curiosity that induced the said North Naylor to make such enquiry, and that he had private reasons for the same, which he did not choose to disclose to him, and that he certainly meant to make some use of the information he received."[1]

The Advocate General, in his letter, dated the 30th January, 1780, wrote: "The Company's Attorney has, in obedience to the rule, answered affidavits which contained no specific charge against him, and in which, though all that is advanced upon conjecture and hearsay were established in proof, there is not anything, I am decidedly of opinion, that can so far criminate him as to justify an attachment."[2] But the Court thought

1 Cossijurah Appendix, 15.
2 *Ibid*, 18.

otherwise. It is not necessary for our purposes to go into the matter in detail, and suffice it to say that the rule against Mr. Naylor came on for hearing on the 3rd March, 1780, and the Chief Justice finally remarked : "Upon the whole, I am not only of opinion that there are good grounds for the attachment, upon the affidavits filed against Mr. Naylor, but think the grounds are increased from his own affidavit." Chambers and Hyde concurred and the latter added that the whole matter should be enquired into by interrogatories. The attachment was accordingly ordered. Bail was immediately proferred by Mr. Thompson on behalf of Mr. Naylor but it was refused. The Chief Justice said : "It is true, the discretion is lodged in the Court ; but the Court must vindicate its authority ; if we accepted bail, it could be no punishment ; we mean to inflict an exemplary one. Lest the Sheriff should not understand the mode of confinement on attachment, it is necessary he should understand, that he must confine his prisoner

within the walls of the gaol."[1] Mr. Naylor was accordingly confined in the common gaol and called upon to answer twenty interrogatories in connection with the criminal prosecution then pending against him.

Even before this, on the 22nd of February, 1780, Mr. Naylor had written a letter to the Governor-General and Council in which he complained of the insufficiency of the facts alleged in the affidavits, of the weak and incompetent evidence of those facts, and of the unusual precipitancy of the original proceeding. He also complained of the delay of justice on the part of the Court, and gave it as his opinion that the proceedings of the Court were "rather a deliberate and concerted measure to degrade the dignity of Government, than as having for their object so inconsiderable a sacrifice as himself."[2] On the 9th March he wrote another letter to the Governor-General and Council from the Calcutta gaol, transmitting to them a copy

1 Cossijurah Appendix, 21.

2 *Ibid.*

of the twenty interrogatories and asking their direction as to whether he should answer them or not. This letter was very carefully considered by the Governor-General and Council and they were decisive in their opinion that "taking the question on public ground, it is their duty to forbid his answering these interrogatories ; and that unless they consented Mr. Naylor could not answer them without a breach of duty and confidence, as their official servant ; but in consideration of the case, as it personally respected himself, they find themselves restrained by the apprehension that a long imprisonment in Calcutta gaol would be fatal to Mr Naylor, and therefore, to prevent his becoming the victim of their rights, they insist and direct, that he do answer to the interrogatories, having first entered his exceptions against such parts of them as he shall judge it improper in him to reveal, or illegal in the Court to put to him." They were, however, not very hopeful that this moderate expedient would avail them "if the report

which had been made to them be true, and they have reason to believe it to be so, that the strict order for the imprisonment of Mr. Naylor was intended as a punishment, and expressed as an exemplary punishment, though inflicted before his conviction."[1] It appears, however, that Mr. Naylor was soon afterwards released from his confinement on bail[2] but he was already a broken man. "The unfortunate lawyer, who had been in weak health for sometime previous to his imprisonment, heard while in prison, the news of his wife's death, and shortly after his release he followed her to the grave."

It is difficult for us to say whether the facts disclosed in the affidavits really justified an attachment. Mr. Naylor's view was that the whole thing arose out of "an anxious desire to expose an imagined inability in Government to protect its agents in the execution of its measures." In his opinion the affidavit of William Lewin authorises

1 Cossijurah Appendix, 23.

2 Report, p. 35.

this conclusion. Naylor says: "Unable to discover a circumstance sustained by real facts, he has found in suspicions and conjectures, and a manageable conscience, well suited to the wishes of his employers, the means of giving a constructive criminality to an act in itself innocent and inoffensive; such, I affirm, was the enquiry made by me at the Sheriff's office. Those conjectures of Mr. Lewin must appear from the nature of the case to have been long posterior to the fact which is sworn to have suggested them; for no resolution had at that time passed your Board, nor had you been furnished with information of a military force being sent by the Sheriff to Cossijurah; yet these suspicions and conjectures, unsupported by any collateral fact which can in any degree affect me, are accepted by the Court, and have, to all appearance, in their judgment already condemned me as a party to the resistance of their process. The affidavit of Hyderam does not appear to have been more deserving of attention; he speaks only on hearsay

from a third person."[1] The Advocate General also, as we have seen, had been decidedly of opinion that there was nothing in the affidavits which could justify an attachment. The Chief Justice, on the other hand, held that "there never was a clearer case for the granting of an attachment than this." The matter is for lawyers to decide and we leave it to them to judge whether the attachment was justified, or whether the Court in a mood of injured dignity vented their wrath on the only person they could lay their hands upon.

The rule against Lieutenant Bomford could not be served though it was enlarged for some time, because the Sheriff's officers were openly resisted. Impey writes: "The Sheriff has as yet been as unsuccessful in serving the enlarged rule on Bomford, as he was in the case of the original rule. The Governor General and Council have given no assistance to the Sheriff, and from the conduct of Colonel Ahmuty it seems evident,

1 Cossijurah Appendix, 21.

that they have not given any order for the admission of the Sheriff's officer within the camp ; for still greater diligence is now used to prevent the service ; Colonel Ahmuty absolutely refused to receive a note sent him by the Sheriff's officer ; no person is suffered to pass the lines, without being strictly searched to discover whether he comes from the Sheriff. The officer having been refused admittance on avowing his purpose, it was attempted to serve the defendant by artifice ; a common peon was sent from Calcutta, as if with a private letter to Bomford ; but he had been dogged from the Sheriff's office from Calcutta, and was therefore prohibited from delivering it."[1] It will thus be seen how the Council's resolve to abide by the principles on which they had proceeded in their resistance to what they regarded as the illegal acts of the Supreme Court and their determination to enforce and defend the orders made upon those principles, were being carried out to the letter.

1 Cossijurah Appendix, 26.

In the meanwhile Kasinath Babu instituted a suit in the Supreme Court against Warren Hastings, Richard Barwell, Philip Francis and Edward Wheler for trespass, alleging damages to the extent of five lakhs of rupees.[1] "Although from the summons it did not appear what the ground of action was, yet the name of the Plaintiff left the Council no room for doubt; they accordingly directed, that Counsel should plead in each action to the jurisdiction, taking for the ground of such plea, the exemption of the Members of Government from the jurisdiction of the Supreme Court upon any suit to be preferred individually against them, for their concurrence in acts of Government." But when they saw the terms of the plaint and found that Kasinath had sued them for acts done by them in their collective capacity of Governor-General and Council they (except Barwell) directed the appearance to the action to be withdrawn. They refused to admit that "their corporate acts, as the

1 Cossijurah Appendix, 22.

Government of that Presidency, or done in the execution of powers vested in them by Parliament, are cognizable in the Supreme Court of Judicature, or that they are answerable, as individuals, in that Court, for the consequences of such acts." The Company's Counsel was further directed to make a declaration to the Supreme Court to the effect "that they would not submit to any rule, process, or judgment, or other act whatsoever, of the Supreme Court, in that action, or in any other action of the same nature, by which it may be attempted to make them answerable in the Supreme Court, as individuals, for the corporate acts of the Governor General and Council, not cognizable by the Supreme Court."[1]

The Court considered this declaration a clear contempt of His Majesty's law and of his Court and ordered it to be recorded in order to give it more authenticity and to put it in a proper form for transmission, if necessary, to His Majesty and the two Houses

1 Cossijurah Appendix, 24.

of Parliament. But as the matter was concerned with the Governor-General and Council the Court decided to take no further action. It appears, however, that near about the 12th of March, 1780, Kasinath ordered his Attorney to discontinue the suit against Warren Hastings and the three members of the Council, as also the suit against the Raja of Kasijora. This was done and there the matter technically ended.

Impey writes : "There can hardly be a stronger instance of the power and influence of this Government, and of the manner of exerting it, than the inducing this man (Kasinath) to give up so large a demand as he was prosecuting for ; and to discontinue to-day a suit which he strongly struggled to support yesterday.—They tried what could be done by intimidating the Court ; and having found that ineffectual, are getting over the prosecutors of contempts to prevent the authority of the Court being vindicated. It is not probable you will hear of any further exertion of the natives in support of their

rights against the power either of Government or individuals; but the Court will quietly sink into inaction and oblivion."[1] There might be considerable truth in this, as also in Impey's further complaint that the Council's notification to the Zamindars led to wholesale abuse and forcible obstruction to the Court's processes even in cases where the defendants were, in terms of that notification itself, clearly within the jurisdiction of the Court. In his letter to Lord Weymouth already referred to, Impey mentions several such instances. The most significant of these appears to be the affair of Raja Budinaut (Baidyanath ?), the Zamindar of Dinajpur. It appears that one Kasinath Dobe sued Ramkissen Sarmana in the Supreme Court for debt. The defendant was an Amin and received a regular salary from the Company. He was thus clearly within the jurisdiction of the Supreme Court. Accordingly, a Capias was issued with a bailable clause and two bailiffs were

1 Cossijurah Appendix, 25.

despatched to execute it. The defendant is said to have quietly submitted to the arrest but "Rajah Budinaut, the Zemindar of the place, sent out a large body of men, who rescued the defendant, seized the Sheriff's officers, confined them one night, and the next morning carried them before the Zemindar, who told them he had reeeived an order from the Governor-General and Council, which he said he had in his hand, forbidding him to allow any warrants from the Court to be executed within the district of Dinagepore—That he had before suffered warrants to be executed there ; but since he had received the order, he would not permit the execution of another. He dismissed them, as they were but two ; threatened them, if they returned ; and that if Europeans, or a greater number, came, he would treat them in a different manner."[1] Impey says : "I hear of many other cases, where the Sheriff's officers have been obstructed, and returned without being able

1 Cossijurah Appendix, 26.

to execute process……I have received intelligence, that at the time of the distributing of the Persian order, both the natives, Provincial Councils and Chiefs of districts, had private instructions, of much greater latitude than the words of the order, even to the limiting of the process to the town of Calcutta ; but my intelligence is not such as I will vouch the truth of……From Mr. Cleveland we learn, that persons clearly within the descriptions which give the Court jurisdiction, and specially sworn to be in the service of British subjects, are to be protected against the Court, if they fell under other descriptions, though they have defended the cause, and have not pleaded to, or pretended not to be objects of the jurisdiction." We need not pursue the complaints of Impey any further as they are mostly based on hearsay and private intelligence, the truth of which he will not vouch for. But the instance of Raja Baidyanath and one or two others show that in some cases at least the notification of the Governor-General and

Council had been misunderstood and even the legitimate jurisdiction of the Court forcibly restricted. This was more or less inevitable under the circumstances and it is important to remember that these things happened, not *before* but *after* the open clash had actually occurred.

To us it seems clear that blame attaches to both the parties for having failed to rise equal to the occasion and arrive at something like a "gentlemen's agreement," at least for the time being. It should not be forgotten that the Company just then was passing through a crisis in India, the deadly war with the Marathas still continuing and that with Hyder Ali about to begin. At the same time, "the whole resources of Britain were strained to the utmost by the struggle with the American colonists, France, Spain and Holland." At such a crisis "the discreditable spectacle of a governing Council marching its troops against the officers of the Supreme Court" should certainly have been avoided at all costs. Impey says that he had made a

suggestion to Hastings to the effect that he would do all in his power to prevent all prosecutions for what was past if only the Raja of Kasijora was allowed to plead to the jurisdiction. Hastings could not agree because he thought that this would be practically giving up the point for which the Council had been contending.[1] On the other hand, the Council, in their declaration to the Supreme Court, said: "That supposing our present claims to the exemption we contend for should appear to the Court not to be founded in strict legal right, still the Governor-General and Council think themselves entitled to expect from the prudence and moderation of the Judges, and from the interest they hold in the general welfare and security of the British Empire in India, that they will not permit such a question to be agitated here; but that they will agree to suspend all proceedings that may have relation to it, and suffer the general question to be referred Home, as the Governor-

1 Cossijurah Appendix, 26,

General and Council are desirious it should be, to the determination of a higher jurisdiction, or until the sense of the Legislature can be taken upon it, and the Governor-General and Council declare themselves ready to accede to any mode which the Judges thought fit to propose, whether for the immediate accommodation of the present unfortunate difference, or for a reference of it to Paliament, provided that in the meantime all proceedings in this matter be suspended in the Supreme Court."[1] The Court, however, held : "That if the claim to exemption be not founded in legal right, to suspend all proceedings in this matter, until such sense shall be taken, would be to surrender, in the mean time, our trusts to the Governor-General and Council—That the suitors are entitled to justice—That we cannot deny it or delay it without reasonable cause, unless we submit to be guilty of the breach of our duty, and the violation of our

1 Cossijurah Appendix, 24.

oaths." [1] It will thus be seen that none of the parties was prepared to yield. Both wanted to have it their own way and nothing came of these suggestions.

In the foregoing paragraphs we have set forth in some detail the main facts of the Kasijora Case and have also attempted to focus the attention of the reader on the principal points at issue between the two parties. It is clear that the whole thing started with the notification issued to the Zamindar of Kasijora by the Governor-General and Council asking him practically to disregard the process of the Supreme Court and there can be little doubt that form the point of view of mere law their action cannot be justified. As we have seen before, the advice of the Advocate General which formed the basis of the notifications to the Raja of Kasijora and, later on, to the Zamindars in general, was grounded on the belief that the Court had deliberately exceeded its jurisdiction, but the procedure that he

1 Cossijurah Appendix, 25.

advised the Council to adopt "made the Council, and not the Court, the final judge of the true interpretation of the provisions of the Regulating Act." Further, as Impey says, "if the Council assumed to themselves to determine on the jurisdiction of the Court", the latter would automatically be placed in subjection to the former, and this could never have been the intention of the authors of the Act. Indeed, the Council threw all law to the winds when they "made the defendants themselves judges of the Court's jurisdiction" and encourged them to resist the Court's processes by force.

The Council's refusal to lend assistance to the Sheriff can also, it seems, hardly have any justification in law. The requisition of the Sheriff was made, as we have seen, under the last clause of the Charter which distinctly states : "And we do further hereby stictly charge and command all our Governors, Commanders, Magistrates, Officers and Ministers, Civil and Military, and all our faithful and liege subjects whatsoever,

in and throughout the said provinces..... that in the execution of the several powers, jurisdictions and authorities, hereby erected, created and made, they be aiding, assisting, and obedient in all things, unto the said Supreme Court of Judicature, at Fort William in Bengal, as they will answer the contrary at their peril." The Advocate General's view was that the language of the Act as well as of the Charter was of so plain and obvious meaning that there could be no doubt as to its intentions. He wrote: "To the plainest understanding it is clear that the mandate of obedience goes only to the exercise of those powers, jurisdictions, and authorities, that are erected, created, and made by the Charter; and as among them that which the Court thus insists upon, and endeavours to enforce, and its officers have, in a manner and by means unheard of, endeavoured to carry into effect, does not, to the apprehension of common sense, appear to exist, the peril under which obedience is enjoined did not appear to me so formidable

as to deter me from advising Government to withhold the assistance required."[1] But the point is that in following this advice the Council arrogated to themselves the right of judging the legality or otherwise of the Court's proceedings, a right which the Act certainly had not assigned to them.

Another very interesting point of law arose in connnection with the case of Kasinath against the Governor-General and members of the Council for trespass. As we have seen, they refused to submit to the jurisdiction of the Court in cases which concerned their public acts done by them in their corporate capacity. The Advocate General wrote : "Their personal exemption from civil, and with certain exceptions, from criminal process, appears to have been given on account of a supposed sufficiency of means to answer every demand, propter dignitatem ; but the Charter, by marking a mode in which they may be compelled to appear, subjects them beyond controversy

1 Cossijurah Appendix, 18.

to the jurisdiction of the Court—That subjection, however, I apprehend to be, in law and in common sense, restrained to their acts in their private capacity.....but their public and joint acts, in the exercise of the powers vested in them by Parliament, I cannot persuade myself are examinable elsewhere; a doctrine to which, in my mind, every reasoning applies, on which it has been determined, that for judicial acts, a Judge is not questionable, other than by the Supreme Authority of the State." On this view of the matter was grounded the declaration of the Governor-General and Council, to which Impey replied in the following terms: "That the defendants, both as British subjects, and as being employed by and in the service of the East India Company, were subject to the jurisdiction of the Court—That neither the charter nor Act of Parliament made any distinction between what they called corporate acts, or any other acts done by them as individuals; and that they were equally amenable to the King's laws

for both—That they were no corporation, and therefore regularly sued as individuals—That neither of the Acts of Parliament or the charter exempted them from actions, though their persons were privileged from arrests ; and that the charter had particularly chalked out the process by which they were compellable to appear to civil suits."[1]

It will be seen that the point of difference arises with regard to the question as to whether the Governor-General and Council were amenable to the jurisdiction of the Supreme Court *individually* for acts done by them *collectively* as Governor-General and Council. Impey's contention is that as neither the Act nor the Charter recognises any such distinction between the so-called individual and collective acts, there could be no question with regard to the Court's jurisdiction. The Advocate General, on the other hand, points out : "In a constitution, from a variety of causes, so defective as that, under which the country is now governed,

1 Cossijurah Appendix, 25.

and public justice administered, the positive provisions of which, in so many instances, also fail, or fall short of their end ; inference and constructive intention, are often the only guides·····This Government being, by the late Act, required to be, in all cases, obedient to the orders of the Company, and that not exercising authority over persons, or dominion over its property in any way, but through the medium, or by the agency of the Governor General and Council ; their acts are, therefore, in inevitable construction, the acts of the Company ; and the appointment of an Attorney, provided for by the Charter, must be intended to have been for the purpose of appearing to and defending such suits as should be grounded upon those acts ; for the appointment were otherwise nugatory and the office useless."[1]

But interesting though these legal questions are, they must be regarded as of secondary importance in any judgment on the Kasijora Case. As we have pointed out

1 Cossijurah Appendix, 20.

more than once, the Council openly avowed that their actions might not be legally correct but they claimed that these were justified by the circumstances and the necessities of the situation. In their letter to the Court of Directors, dated the 25th January, 1780, the Governor-General and Council, speaking of the open resistance preferred against the Court, write : "If in so doing, and by the mode in which it has been done, or the means we have employed for the purpose, we shall have incurred your displeasure, or the disapprobation of his Majesty's Ministers, we shall find our acquittal with ourselves in the confirmed opinion, that if fettered by forms, which can only be observed in quiet times and settled Governments, we had suffered the mischief to run its length, or had waited for a regular remedy from Home, till the situation of public affairs should leave the Legislature leisure to look at us, we should have seen the higher classes of the natives totally alienated, your revenue, running fast to ruin,

all idea of a power in your Government to protect them, utterly annihilated among the people, with every consequence to the nation's interests that may be expected to result from so alarming a state of things". [1] The case of the Council thus appears to be that, in forcibly resisting the process of the Court, they chose the lesser of two evils.

Sir James Stephen, as usual, pays hardly any attention to this aspect of the question and says : "The explanation of the measures taken by the Council is simple. For a variety of reasons, most of which are quite natural and intelligible, they hated the Supreme Court. It represented an authority which the Company's servants practically repudiated. It represented English law, which they hated both for its defects, which no doubt were then great, and for its merits. No doubt they thought it was a great grievance, and indeed it was one, that Behader Beg, should be brought from Patna to Calcutta, to plead his cause in a purely

1 General Appendix, 13.

English Court ; but they probably felt it a much greater grievance that the Ijaradars and Zemindars should be interfered with, if, in order to pay their revenue punctually, they squeezed their ryots in a way which English lawyers would describe as oppressive or extortionate. They may have thought that the Court went beyond the powers given it by the Regulating Act, but they were by no means sure of it. If they had been they would have taken the legal straightforward course of getting a direct decision from the Court upon the questions in which they were specially interested, and testing its correctness by an appeal to the King in Council. They could easily have done so, and had between 1775 and 1780, five years, in which to do it. From this test, though Impey suggested it repeatedly, they invariably shrank. The course which they ultimately took was simple, they had the military force in their hands, they had public feeling with them, and they preferred using that force to appealing to the common

superior of both Court and Council." [1] Thus, in Sir James Stephen's view, the havoc that was created throughout the country by the processes on the Zamindars and the disturbances that the Court brought about in the criminal administration of the country, of which, we venture to hope, conclusive illustrations have been given, are of no importance whatsoever and the attitude of the Council was determined primarily by hatred and impatience.

The only point, which we consider it important to examine, of all that Sir James Stephen says, is his charge that the Council deliberately avoided "the legal straightforward course" of taking the matters in which they were specially interested to the King in Council by way of appeal. Impey writes: "The complaint of our exceeding our jurisdiction commenced early in the time of Sir John Clavering; nor has any new point, to the best of my recollection, been determined concerning it. Yet no appeal

1 Stephen, *op. cit*, vol ii, pp. 211, 212.

has been made, or any judgment given on any plea to the jurisdiction; nor has any prosecution been commenced against any person, for swearing to the facts, which render natives objects of our jurisdiction, and which is necessary to be verified, before process can be obtained."[1] The Governor-General and Council, on the other hand, in their letter to the Court of Directors, write: "We have patiently waited the result of the representations from us to you, and from you to the King's ministers, upon this subject; though the long interval through which we have, with continued hope, looked forward to a new system, or a correction of of the old, has been marked with increasing difficulties to us, and intolerable oppression to the natives, from the steady, undeviating course, which the Judges hold in all matters that respect what they are pleased to call their legal authority."[2] It will thus be seen that what the Council wanted, and

1 Cossijurah Appendix, 26.

2 General Appendix, 13.

what, in their view, the situation demanded, was not a mere clarification of the old Act through judicial decisions, but a thorough legislative amendment. Further, there was another consideration which also possibly weighed with them. A judicial decision, either way, with respect to the position of the Zamindars, might, as Mr. Bogle had pointed out in connection with the case of the Zamindars of Fateh Singh,[1] land the Government in a quandary. The position of the Governor-General and Council thus appears to be that they had waited and waited for legislative interference from England but in the meantime their difficulties had gone on increasing and at last it came to such a pass that the exigencies of government compelled them to adopt an extreme course of action. They claim: "With a becoming moderation we have barely proportioned the exertion to the exigency; and having repressed the instant evil, at that point we have stopped."

1 *Supra*, pp. 86, 87.

The main question was the Court's claim to exercise a temporary jurisdiction over the Zamindars. This question has already been discussed in detail and we would conclude by setting forth the contentions of the Governor-General and Council, as far as practicable, in their own words. They observe : "It is sufficient for us, that by the Act of Parliament, certain classes of men in this country are most expressly, and as we understand, avowedly exempted from the jurisdiction of the Supreme Court, to all intents and purposes. If persons so exempted, must nevertheless obey the process of the Court ; if by not obeying it, they become lawfully subject to sequestration of their property, to fine and imprisonment, and in short, to all the penalties usually inflicted for contempt of a lawful jurisdiction ; or, if in obedience to such process, a Zamindar, for example, who lives 400 miles from Calcutta, shall be dragged hither by the Sheriff's officers, shall be forced to appear before the Court, and wait in Calcutta, and most

probably in jail (since in no case will bail be found for debts, stated for lacks of rupees) until his plea to their jurisdiction shall be determined, which may be many months, in what sense are we to understand the force and authority *thus far* exercised over him, if the Judges should at last decide, that he is not subject to their jurisdiction ? Is it jurisdiction, or is it merely an act of power against which no right can protect him ? Under the operation of such power, whether lawful or not, we are sure that the Zemindar gains nothing by the exemption finally acknowledged to be his right." They further point out that for their information and guidance the Chief Justice had assured them that "a Zemindar, quo ad Zemindar, was not subject to the jurisdiction" unless the Zamindar, by signing an agreement, gave the Court a jurisdiction. In the case of the Raja of Kasijora it was never pretended that he was in the service of the Company, or any of His Majesty's subjects, or that by the bond on which the action was brought he had

waived his exemption. Nevertheless, a writ was issued against him.

As we have seen, "The Court made an early rule, that every person applying for a writ against a native inhabitant of the provinces, should swear, both to his being subject to the jurisdiction, and to the circumstances which rendered him such, and that no writ should be granted without these forms." The affidavit of Kasinath states: "That the said Rajah Soondernarain is Zemindar of the pergunnah Cossijurah and Shahpore, in Bengal, and is employed by the United Company of Merchants of England trading in the East Indies, in the Collection of the revenues, due and payable to the said United Company out of the said pergunnah." The contention of the Governor-General and Council was that "this affidavit took no notice of the first and most essential part of the rule; and notwithstanding this defect a writ was granted upon it." In fact, "though the exemption of the Zamindar appears already established upon the very front of

the case, yet process issues upon that specific authority upon which it should have been refused."[1]

The case against the Court, as we have already stated, arises primarily from their reluctance to amend the procedure initially adopted, even when it led to manifest oppression and corruption of various kinds. The Governor-General and Council complain: "We have to lament, indeed, that in a few, if any instances, the Judges have appeared solicitious to adapt the practice to the place; or seem aware of the consideration, that, though under an ancient, well-established constitution, which has advanced to perfection through the wisdom and experience of ages, the laws will execute themselves, and the stream of public justice find its channel; yet, in a situation such as they act in, cases must often occur, to which, if they attempt to apply the provisions of foreign law, no force or management can regulate its course." And again; "An

1 General Appendix, 13.

accomodating spirit, and a conceding benignity, on their part, not incompatible perhaps with the firmness of public justice, might have given facility to the business of either department. Your Government might then have retained the respect that belonged to it, without which it exists to little purpose ; and our laws, if such an effect was intended, have imperceptibly taken root.— At present, with pain we say it, the one is cramped and enfeebled, and the other become the object of universal consternation."[1] From what we have seen of the effects of the Court's processes on the Zamindars and of its interference with the affairs of the Nizamat, we think that, beyond a shadow of doubt, the prestige of the Government had been undermined and the Court had made itself an object of terror and detestation. But whether this justified the extreme step that the Council adopted is another matter ; it must depend on the

1 General Appendix, 13.

measure of the necessity that the Council could put forward in support of their conduct.

In their declaration to the Supreme Court in connection with the case of Kasinath for trespass, the Governor-General and Council pleaded: "The Governor-General and Council represent to the Judges, and most earnestly request them to consider, the alarming and most dangerous circumstances in which the British Empire and all its dependencies are placed at this moment.—That His Majesty's Government is actually engaged in an attempt to overcome the rebellion of America, of the success of which no favourable expectation can at present be formed; and that an open war with France and Spain actually threatens Great Britain with immediate dangers, which may not permit her to look abroad to the defence and protection of a dominion so distant from the seat of Empire, as that over which this Government is placed.—That here in India, exclusive of whatever may be apprehended

from the designs of a European enemy, they are now engaged in a hazardous and expensive war, with perhaps the first and most powerful of the States of this Country, in which it is but too probable, that the universal jealousy entertained of the British influence in India, may induce many others to take part against us.—That to support this war, and to meet every exigence, not only of this Government, but of the Presidencies of Fort St. George and Bombay, as well as to return a tribute to Great Britain, which never was more necessary than at the present period, they have no resource but in the due and regular collection of the revenues of these provinces.—That if the Zemindars and other landholders thereof, by any pretended law, or construction of law, which they are well assured was never meant to extend to them, should be withdrawn from the exclusive jurisdiction of the Governor General, and made amenable to that of the Supreme Court, and still more, if they should be placed between distinct and clashing jurisdictions;

it will not be possible for the Governor General and Council to insure the collection of the revenues, but if any considerable failure should take place therein, they trust that the Judges in their wisdom will consider, before it is too late, the fatal consequences that must follow.....That if the pay of the Army be not regularly issued, especially to the native troops, the Governor General and Council declare their certain expectation, that general mutiny and revolt will follow, and that it is not unlikely that the event may happen at the same time that these provinces may be invaded, or that the expectation of it, from the public knowlede of our distress under the circumstances which we have described, may excite an invasion, when no further collection of the revenue can take place, unless with the assistance of a military force."[1] In the above picture the colour might have been laid thick here and there, and some of the apprehensions might be somewhat overdrawn, but there can be little

1 Cossijurah Appendix, 24.

doubt that, in essentials, it is quite correct and does not deserve a summary dismissal.

To us it seems clear that the internal difficulties that the processes of the Court wantonly created and the external dangers amidst which the Company's Government was placed justified the extreme step that the Governor- General and Council adopted in forcibly resisting the Court's processes on the Zamindars. We realise, at the same time, that the extent of the necessity, justifying or not a particular measure, must always remain a matter of opinion and quite conceivably, honest differences would be, more or less, inevitable. Some may be found who would accept even the following claim that Impey puts forward on behalf of himself and the Court: "My attention has always been anxiously directed to support the authority of Government, and to facilitate the collections of the revenues; and though partronage, influence and arbitrary will, may have met with some small check, the legal and avowed powers

of the State have received no diminution from the Court ; they might have acquired strength, if the administrators of it would have condescended to make use of the King's authority in his Court of Law."[1] We hope, however, that the reader has been put in possession of all the essential facts and viewpoints to be able to form his own conclusions and to his judgment we leave the matter.

1. Cossijurah Appendix, 26.

INDEX

OPINIONS
ON
THE AUTHOR'S
EVOLUTION OF THE KHALSA, Vol. I.
(Published by the University of Calcutta)

"This is a very interesting book, written in a historical spirit and with intelligent comprehension of religious ideals. Chapter VI on Ideals and Institutions is a well-balanced presentation of the position and reflects credit on the author's judgment. Appendix A on Guru Nanak and the caste system is a moderate and cogent statement which probably gives the truth of a disputed position. I hope his second volume will soon appear".

A. B. Keith

"It seems to me to be a very good and sound piece of research, and the style in which it is written is vigorous and lucid. I think Mr. Banerjee is to be congratulated on his work".

P. E. Roberts

"This interesting work deals with the development of Sikhism during what may be called "the Peaceful Period" of the first five Gurus, down to the completion of the Granth Sahib in 1604, and it will, we hope, be followed by further and still more interesting accounts of the evolution of the Panth in its more militant days. In dealing with the actual history of the Gurus the author, without disregarding the traditional standpoint, is inclined to discredit the purely legendary aspect; and his treatment of the various social and religious enigmas, such as relation of the earlier Gurus to the caste system, the sacred thread, polytheism, pilgrimage, etc., is careful and full of good sense. "Sikhism" says the author, "no doubt started in a protest, but it was a protest against conventionalism and not against Hinduism."

—*Journal of the Royal Asiatic Society, London*

"*Evolution of the Khalsa* fills a long felt gap in Sikh studies. We have an excellent political history of the Sikhs, the one by Cunningham, but the studies of their religion so far have for one reason or another proved unsatisfactory. Trumpp's well-known work, prepared sixty years ago under the aegis of the India Office, was marred by a conspicuous want of sympathy, while Macauliffe's *Sikh Religion*, full and comprehensive as it is, suffers admittedly from the absence of a critical attitude, the author having endeavoured to satisfy the orthodox Sikh opinion and refrained from discriminating between fact and fiction. Professor Banerjee's book, though less ambitious, is both fair and critical, and embodies, moreover, the results of recent research.

The present volume, the first of the contemplated two, covers the period leading to the compilation of the Granth Sahib in 1604, the period of peaceful evolution of the Sikh Panth. It delineates how the band of Nanak's followers slowly swelled, and under successive Gurus, separated itself from the main body of Hindus, and became a self-governing brotherhood presided over by the Guru, the numerous and far-flung component parts of its body being welded together by the organisation of *masands*. Professor Banerjee's account of the Sikh philosophy, ideals and institutions, religious and social, is sympathetic, fair and critical. And it removes, incidentally, some of the popular misconceptions concerning Guru Nanak and the early phases of Sikhism. It proves for instance that there is no evidence to show that Nanak was an iconoclast who aspired to build a new structure upon the ruins of the old. His message indicated a reaction not so much against Hinduism as against formalism and conventionalism.

His primary concern was "to provide his contemporaries with a new viewpoint and a detachment which would enable them to understand the relative value of things in matters religious and to distinguish the fundamental from the secondary". Herein the author departs from the accepted current opinion of the Sikhs them-

selves, but his thesis is well founded and has been ably developed. .....On the whole the author must be said to have accomplished his task creditably. In his hands material offering several difficulties—for excepting the utterances of the Gurus themselves now embodied in the Granth, it comprises works of a later date containing fanciful legends, has yielded a scholarly and readable history of the evolution of the Sikh Khalsa".

— *Times of India.*

"If history, as Schiller said, is philosophy teaching with examples, this volume is an admirable illustration. The quotation from Novalis prefixed to it gives a foretaste of the author's art, which shows what can be achieved by the historian's preoccupation with details coupled with a philosopher's desire for a synoptic vision. The two temperaments are indeed rarely found in the same person : where they are, the virtues of the metaphysician often appear as the vices of the historian, as notably in David Hume. Here at least we have a happy union of the two disciplines.

Stipulating in advance "a two-fold development in the evolution of Sikhism," the author first shows how "Sikhism gradually detached itself from Hinduism and developed ideals and institutions of its own" so as to acquire the designation of a *Panth* or religious denomination, and, secondly, how at the beginning of the second period from 1605 to 1699, "when the Khalsa was brought into existence" there came the sudden transition to a creed professed by men of great military prowess. The last three chapters dealing with "The Message of Guru Nanak," "The foundation of the Sikh Panth," and "Ideals and Institutions" make fascinating reading of which no idea can be given by random quotation. The work is, from beginning to end, an excellent production, and the public will await with interest the second volume".

— *The Statesman*

".....Mr. Indhubhusan Banerjee publishes just the first volume of his long-awaited account of Sikhism. In presenting his account he broadly divides the history of Sikhism into two periods, the first or earlier period extending from the advent of Guru Nanak to the compilation of the *Granth Sahib* in 1604, and the second or later period from 1605 to 1699. To put it in the author's own words: "From the days of Guru Nanak down to the year 1604 when the compilation of the *Granth Sahib* was completed, the movement ran on peaceful lines. Sikhism gradually detached itself from Hinduism, developed ideals and institutions of its own, and the Sikh Panth came to acquire a more or less definite meaning. And Sikhism had no quarrel either with Islam or the established State but at the very outset of the second period, which may be said to have extended from 1605 to 1699, when the Khalsa was brought into existence," we have the execution of Guru Arjan, etc., (pp. 3-4).

I quote these words not only because they clearly distinguish between the two periods of the History of Sikhism, each of them needing a handy volume for its orientation but also because they serve to put in a nutshell the subject-matter of the work as a whole.

And its subject-matter, namely, the evolution of the Khalsa, is introduced as a great problem, in finding out a satisfactory solution for which one has to consider and carefully weigh all available evidences and dispassionately watch the process of development and the onward progress of the movement till it culminated in the inauguration of a full-fledged Sikh military organization. Mr. Banerjee applies throughout a cathartic to expose the futility of all attempts to account for the later developments in Sikh history of all manner and kind by the received teachings of the earlier Gurus, especially of Nanak. As he conceives and portrays the course of the Sikh history, when Sikhism was started by Guru Nanak, it emerged as one of the similar other contemporary and earlier movements, purely spiritual in its aim and deeply devotional in its method,

planting its faith in the name of the Lord, reposing its absolute trust in the *Sadguru*, pre-eminently a religion for the householders. In spite of all theoretical denunciations of caste, its rigidity and inherent social injustice, the caste rules as to inter-dining and inter-marriage were as much observed in practice by the Sikhs of the earlier days as by other sections of the Hindu community. Had Sikhism been left to pursue its own course and proceed on its own lines, its history would not have been fundamentally different from that of Vaisnavism or Saivism, of Buddhism or Jainism. But as Mr. Banerjee seeks to show, Sikhism differed from other parallel movements in that "whereas the other schools developed, more or less, on traditional lines, and after short periods of fruitful activity, quieted down into narrow, hide-bound or at best mystical sects, Sikhism went off at a tangent and ultimately evolved what has been called a church-nation." In short, he calls our attention to the set of circumstances, (in so far as the present volume is concerned), under the pressure of which Sikhism took or had to take a different line of development, as though by way of a digression from its original path, and was ultimately transformed into a complete military theocracy. The picture, even of the earlier phase of Sikhism, of the foundation of the Sikh Panth , is characterised by a wonderful sense of fairness and clarity of vision, and the stages are clearly marked out.

The exhaustive bibliography appended at the end of the volume exhibits his wide reading, including that of the original sources of information, as well as his critical power of judgment.

Mr. Banerjee's work is a remarkable addition to modern historical literature ; it is thought-provoking without unnecessarily offending any, and edifying without being unnecessarily discursive and circumvent. Such a work should find its place in every home or institution that cares for a piece of good literature."

—*Indian Historical Quarterly*

"A critical work on the evolution of Sikhism was for long a desideratum. Macauliffe's work on Sikh religion is uncritical and does not discriminate between primary and derivative sources, between fact and fiction. He presents the Sikh point of view, not the view-point of history. Those who have studied this aspect of the religious history of India must have found that there is either the orthodox literature of mere panegyric or the almost defamatory writing of Trumpp and others. Here we have for the first time a clear critical analysis and conclusions that are expressed with emphasis and proportion true to realities. As we read this book hazy contradictory notions disappear and clear definite ideas take their place. This volume therefore removes a long-felt want and marks an epoch in the history of Sikh studies.

To write religious history is always a very difficult task and in the case of the early Guru period of Sikh history the difficulty is further increased by the absence of any material for a satisfactory treatment on critical lines. Any one who reads this volume will find what a stupendous task the author had to face 'to get rid of the fable mixed up with the legends and to work the residue of fact into some sort of historical order'.

The history of the foundation of the Sikh Panth is given in its true historical setting and we have a clear account of the forces internal and external that conditioned the development. The facts of the life of Guru Nanak are presented in an altered sequence. The Dacca manuscript discovered by Gurubksh Singh and an inscription found at Baghdad in 1918, have enabled the author for the first time to make the whole topic consistent and clear. At the same time in Chapter IV he has very lucidly presented the message of Guru Nanak. We have a new viewpoint with regard to Nanak's attitude towards the caste system—he protested against conventionalism, not against Hinduism; he attacked scripturalism and not the scriptures; he made a distinction between caste and caste-pride. The author

writes, 'His was the language of reaction and his persistent endeavour to hammer the fundamental truth on his listeners gives a seemingly destructive tone to his sayings which may well mislead the unwary.' It is conclusively proved in Appendix A how Sikhism tolerated caste as a civil institution.

In Chapter V, we get the history of the development of the Sikh Panth under the immediate successors of Guru Nanak. We are told how his followers were 'saved from total absorption by the Hindu mass' and how 'Sikhism was put on the way of gradual dissociation from Hinduism and consolidation into a separate sect'.

The chapter on Ideals and Institutions explains the position of Guru in Sikhism. The conception of the Guru was rather complex and the superficial charge that the monotheism of Nanak was infected by man-worship is certainly not justified in view of the impersonal nature of Guruship so clearly delineated. The author writes, 'The equation is between the Guru as an abstract principle of truth and enlightement and God who is the very essence of truth, enlightement and bliss. But this idea was too abstruse for ordinay minds and there can be little doubt that it led to misconceptions, thereby lending colour to the charge that Sikhism was infected with man-worship.' We also get a clear idea of the development of the ideal of brotherhood and the instruments of pivotal importance that led to the growth of a corporate sense."

—*The Calcutta Review.*

The Second Volume to be published shortly.